

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30754
LANSING, MICHIGAN 48909

BILL SCHUETTE
ATTORNEY GENERAL

March 5, 2013

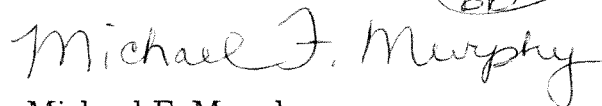
Clerk of the Court
Court of Claims
313 W. Kalamazoo St.
P.O. Box 40771
Lansing, MI 48901

Re: *Detroit Police Officers Assoc v City of Detroit*
Court of Claims Case no. 12-80-MK

Dear Clerk:

Enclosed for filing is the PROOF OF SERVICE that a true copy of the Final Order Denying Declaratory Judgment and Granting Dismissal for Defendants was served on counsel of record.

Sincerely,

Handwritten signature of Michael F. Murphy, with the initials "bb" circled above it.

Michael F. Murphy
Assistant Attorney General
State Operations Division
(517) 373-1162

MFM:bb

Enc.

cc: Fillipe S. Iorio w/true copy of Order and Proof of Service
Jason McFarlane w/true copy of Order and Proof of Service
John H. Willems ✓ w/true copy of Order and Proof of Service

2012-0016050-A\Detroit Police Officers Assoc v City of Detroit\Clerk ltr 3-5-13

STATE OF MICHIGAN
COURT OF CLAIMS

DETROIT POLICE OFFICERS
ASSOCIATION,

No. 12-80-MK

HON. JAMES S. JAMO

Plaintiff,

v

CITY OF DETROIT, a Municipal Corporation;
DAVID BING, Mayor of City of Detroit; KIRK
J. LEWIS, Deputy Mayor (Acting as Mayor) of
City of Detroit; City Council, City of Detroit;
ANDY DILLON, State Treasurer; THE
FINANCIAL REVIEW TEAM FOR THE CITY
OF DETROIT; STATE OF MICHIGAN; RICK
SNYDER, Governor; RALPH L. GODBEE,
Chief of Police; City of Detroit;

**FINAL ORDER DENYING
DECLARATORY JUDGMENT
AND GRANTING JUDGMENT
OF DISMISSAL FOR
DEFENDANTS**

Defendants.

Donato Iorio (P57423)
Attorney for Plaintiffs
Kalniz, Iorio & Feldstein, Co., L.P.A.
P.O. Box 352170, 5550 W. Central Ave.
Toledo, OH 43635-2170
Ph: (419) 537-4825 Fax: (419) 535-7732

Fillipe S. Iorio (P58741)
Attorney for Plaintiffs
Kalniz, Iorio & Feldstein
4981 Cascade Rd. S.E.
Grand Rapids, MI 49546
Ph: (616) 940-1911 Fax: (616) 940-1942

Michael F. Murphy (P29213)
Attorney for Defendants State of MI,
Dillon, Snyder, Review Team
MI Department of Attorney General
State Operations Division
P.O. Box 30754
Lansing, MI 48909
Ph: (517) 373-1162 Fax: (517) 373-2060

Margaret A. Nelson (P30342)
Attorney for Defendants State of MI,
Dillon, Snyder, Review Team
MI Department of Attorney General
Public Employment, Elections & Tort
P.O. Box 30736
Lansing MI 48909
Ph: (517) 373-6434

Jason McFarlane (P73105)
Attorney for Defendant City of Detroit
City of Detroit Law Department
Labor & Employment Law Division
660 Woodward Ave., Suite 1650
Detroit, MI 48226
Ph: (313) 237-5038 Fax: (313) 224-5505

John H. Willems (P31861)
Attorney for Defendants Bing, Lewis
and Godbee
Miller Canfield Paddock & Stone PLC
150 W. Jefferson Ave., Suite 2500
Detroit, MI 48226
Ph: (313) 963-6420 Fax: (313) 496-8453

At a session of the
Court of Claims, held

FEB 28 2013

PRESENT: HON. JUDGE JAMES S. JAMO

This matter having come before the Court for hearing February 20, 2013 on Plaintiff's motion for entry of a Declaratory Judgment; the Court having considered the pleadings, briefs, and argument of counsel; and, the Court being otherwise fully advised;

IT IS HEREBY ORDERED that Plaintiff's motion for entry of Declaratory Judgment is denied for the reasons stated on the record.

IT IS FURTHER ORDERED that a judgment of dismissal is entered for Defendants on all claims pursuant to MCR 2.116(I)(2) for the reasons stated on the record.

This Order disposes of all claims and parties and closes the case.

JUDGE JAMES S. JAMO
COURT OF CLAIMS JUDGE

Approved for entry as to form only:

/s/Fillipe S. Iorio w/perm. 2/26/13
Fillipe S. Iorio (P58741)
Attorney for Plaintiff

/s/John Willems w/perm. 2/27/13
John Willems (P39318)
Attorney for Defs. Bing, Lewis and Godbee

/s/Jason McFarlane w/perm. 2/21/13
Jason McFarlane (P73105)
City of Detroit Law Department
Attorney for Defs. City of Detroit
and City Council

Michael F. Murphy (29213) *with permission P67126*
Assistant Attorney General
Attorney for Defs. State of Michigan,
Dillon, Snyder and Review Team

2012-0016050-A\Detroit Police Officers Assoc v City of Detroit\Final Order

STATE OF MICHIGAN
COURT OF CLAIMS

DETROIT POLICE OFFICERS
ASSOCIATION,

No. 12-80-MK

HON. JAMES S. JAMO

Plaintiff,

v

CITY OF DETROIT, a Municipal Corporation;
DAVID BING, Mayor of City of Detroit; KIRK
J. LEWIS, Deputy Mayor (Acting as Mayor) of
City of Detroit; City Council, City of Detroit;
ANDY DILLON, State Treasurer; THE
FINANCIAL REVIEW TEAM FOR THE CITY
OF DETROIT; STATE OF MICHIGAN; RICK
SNYDER, Governor; RALPH L. GODBEE,
Chief of Police, City of Detroit;

PROOF OF SERVICE

Defendants.

Donato Iorio (P57423)
Attorney for Plaintiffs
Kalniz, Iorio & Feldstein, Co., L.P.A.
P.O. Box 352170, 5550 W. Central Ave.
Toledo, OH 43635-2170
Ph: (419) 537-4825 Fax: (419) 535-7732

Fillipe S. Iorio (P58741)
Attorney for Plaintiffs
Kalniz, Iorio & Feldstein
4981 Cascade Rd. S.E.
Grand Rapids, MI 49546
Ph: (616) 940-1911 Fax: (616) 940-1942

Michael F. Murphy (P29213)
Attorney for Defendants State of MI,
Dillon, Snyder, Review Team
MI Department of Attorney General
State Operations Division
P.O. Box 30754
Lansing, MI 48909
Ph: (517) 373-1162 Fax: (517) 373-2060

Margaret A. Nelson (P30342)
Attorney for Defendants State of MI,
Dillon, Snyder, Review Team
MI Department of Attorney General
Public Employment, Elections & Tort
P.O. Box 30736
Lansing MI 48909
Ph: (517) 373-6434

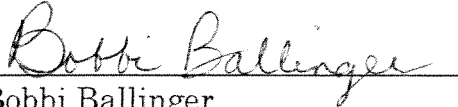
Jason McFarlane (P73105)
Attorney for Defendant City of Detroit
City of Detroit Law Department
Labor & Employment Law Division
660 Woodward Ave., Suite 1650
Detroit, MI 48226
Ph: (313) 237-5038 Fax: (313) 224-5505

John H. Willems (P31861)
Attorney for Defendants Bing, Lewis
and Godbee
Miller Canfield Paddock & Stone PLC
150 W. Jefferson Ave., Suite 2500
Detroit, MI 48226
Ph: (313) 963-6420 Fax: (313) 496-8453

PROOF OF SERVICE

The undersigned certifies that on March 5, 2013, a true copy of the FINAL ORDER DENYING DECLARATORY JUDGMENT AND GRANTING JUDGMENT OF DISMISSAL FOR DEFENDANTS, dated February 28, 2013, was served on the attorneys of record in the above-captioned case by mailing the same to them at their respective addresses, with first class postage fully prepaid.

Fillipe S. Iorio Kalniz, Iorio & Feldstein 4981 Cascade Rd. S.E. Grand Rapids, MI 49546	Jason McFarlane City of Detroit Law Department Labor & Employment Law Division 660 Woodward Ave., Suite 1650 Detroit, MI 48226
John H. Willems Miller Canfield Paddock & Stone PLC 150 W. Jefferson Ave., Suite 2500 Detroit, MI 48226	


Bobbi Ballinger
Legal Secretary to Michael F. Murphy

2012-0016050-A\ Detroit Police Officers Assoc v City of Detroit\POS 3-5-13

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE
DETROIT POLICE OFFICERS ASSOCIATION,
Plaintiff, Case No. 12-010859-CL
vs.
CITY OF DETROIT,
Defendant.
-----/

Proceedings taken in the above-entitled
matter before **HONORABLE KATHLEEN MACDONALD**, Third
Judicial Circuit Court Judge, Detroit, Michigan, on
Thursday, August 30, 2012.

APPEARANCES:

FOR PLAINTIFF: MR. DONATO IORIO
FOR CITY OF DETROIT: MR. ANDREW JARVIS
FOR MAYOR DAVE BING: MR. RICHARD SERYAK
FOR ATTORNEY GENERAL
& STATE TREASURER: MR. MICHAEL MURPHY
MR. MICHAEL MCGEE

Shelee Beard
Official Court Reporter

I N D E XWITNESSPage

N/A

E X H I B I T SNUMBERMARKEDADMITTED

N/A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Detroit, Michigan

Thursday, August 30, 2012

- - -

THE CLERK: Calling case number
12-010859, Detroit Police Officer Association
versus City of Detroit.

MR. IORIO: Donato Iorio on behalf of
the Plaintiff Detroit Police Officer Association.

MR. JARVIS: Andrew Jarvis on behalf
of the Defendant City of Detroit.

MR. SERYAK: Richard Seryak on behalf
of Mayor Dave Bing.

MR. MCGEE: Michael McGee on behalf
of Mayor Bing.

MR. MURPHY: Michael Murphy on behalf
of the attorney general and state treasurer.

THE COURT: Before we begin, when you
address the Court, please restate your name and
who you represent for purposes of the record so
we keep everything straight. Procedurally, the
first thing we need to address is the request to
intervene that has been filed by Mayor Bing as
well as the attorney general and state treasurer.

MR. SERYAK: Richard Seryak appearing
on behalf of Mayor Bing. We have filed the

1 motion to intervene in this case, both as a
2 matter of right and as a matter of interest. The
3 mayor was a party to the financial stability
4 agreement. The mayor has worked acidulously and
5 desperately to avoid financial crisis. We
6 believe he should be a party to this proceeding
7 just as he was in an almost copycat case filed in
8 front of the court of claims and Judge
9 Manderfield. For the reasons set forth in our
10 motion we'd ask that the Court grant the
11 intervention.

12 I don't know if counsel for the
13 plaintiff has an objection; we've did not receive
14 any. I'll let counsel address their position on
15 the motion, but we urge the Court to grant it.

16 MR. JARVIS: If I may, Judge. I know
17 the Court is probably familiar with some of the
18 issues between Corp Counsel and the Mayor's
19 Office regarding the representation and the
20 charter. At this point we have no objection to
21 the mayor intervening in the suit, because for
22 all practical purposes the Corp Counsel and the
23 Mayor's Office are on the same side on this.

24 THE COURT: And then the state.

25 MR. MURPHY: Yes, your Honor.

1 Michael Murphy appearing on behalf of the
2 attorney general and the state treasurer. I
3 think my motion sufficiently outlines our reasons
4 for being here and that we are entitled to be
5 here, especially the attorney general under the
6 statute. We ask that the Court allow us to
7 intervene as a party defendant.

8 MR. IORIO: Thank you, your Honor.
9 Donato Iorio on behalf the DPOA. The DPOA has
10 filed a formal motion in opposition to proposed
11 intervenor state for the reason articulated in
12 the responsive opposition brief. Specifically
13 because this is an entirely different case than
14 what was filed before the court of claims. I
15 know we'll get into the merits on that when we
16 move on. In addition, the DPOA, while it hasn't
17 filed a formal written objection to proposed
18 intervenor Bing, we believe that there's no
19 necessity in terms of granting the city dual
20 representation. The City of Detroit particular
21 has corporation counsel pursuant to its charter,
22 an authorized representative, and has adequately
23 represented the City of Detroit.

24 DPOA believes that allowing the city
25 of Detroit's corporation counsel, as well as

1 proposed intervenor Bing to argue both provides
2 dual advantage.

3 THE COURT: I'm going to allow it
4 under the court rules it's going to be a
5 permissive intervention. They have timely
6 requested the intervention and have alleged in
7 their motion that their interests are different
8 and the opposing or differing parties cannot
9 protect their interest properly. So their
10 motions to intervene are granted.

11 Then we get to what we're really here
12 for today. Proceed, counsel.

13 MR. IORIO: Your Honor, as indicated,
14 my name is Donato Iorio. I'm appearing on behalf
15 of the Plaintiff Detroit Police Officer
16 Association. Plaintiff Detroit Police Office
17 Association is a labor organization that
18 represent roughly 2,000 police officers who are
19 assigned to frontline tasks of responding to the
20 city's war on crime. Plaintiff DPOA has filed a
21 two count complaint seeking both declaratory and
22 injunctive relief to stop the City from acting
23 pursuant to an Act, Public Act 4 that no longer
24 is in effect and has been suspended and has been
25 rendered inoperative as opined by the attorney

1 general in its August 6th opinion. And more
2 importantly, as determined by article 2 section 9
3 of the Constitution. Despite this fact the City
4 of Detroit has indicated and expressed its
5 intention to proceed with the plan to
6 unilaterally change Detroit Police Officer wages,
7 hours and terms of conditions of employment. And
8 its plan to do so is pursuant to and arises out
9 of Public Act 4. That is the legal foundation
10 that serves as the City's anchor for imposing
11 CET.

12 The DPOA submits that the dispositive
13 legal question in this case is what, if any,
14 legal authority exist that justifies the city in
15 continuing to operate pursuant to an act that
16 doesn't exist. In the DPOA submits that not only
17 does Article 2 section 9 answer that
18 overwhelmingly but the legal framework that
19 currently exist today is MCL section 423.243.
20 The law expressly prohibits the city of Detroit
21 from unilaterally changing, altering or modifying
22 whatsoever the existing wages and hours and terms
23 and conditions of employment of Detroit Police
24 Officers. And specifically the wages, hours, and
25 terms and conditions of employment that existed

1 for Detroit Police Officers on a date they invoke
2 Act 312, which was June 22nd. The Act 312 has
3 been marked as verified complaint Exhibit B. And
4 so the DPOA has filed its verified complaint, its
5 brief, reply brief which attached a number of
6 evidentiary pieces that we think provide a
7 detailed and comprehensive recitation of the
8 facts that lead of to you doorstep, your Honor.
9 I'm not going to focus on each and every fact,
10 but simply the more salient facts that DPOA
11 believes justifies its entitlement to preliminary
12 a declaratory relief. That takes us back 40
13 years to Act 312 which was passed more than 40
14 years by a legislation that recognized
15 governments exist to protect people and property.
16 That's their sole function and responsibility.
17 They're able to protect people and property by
18 and through largely police officers and
19 firefighters. So critical are the services that
20 police officers and firefighters provide and the
21 legislature recognize, they need to be carved out
22 from all other public employees and given
23 preferential treatment for resolving disputes
24 concerning successor collective bargaining
25 agreements. That procedure was Act 312 which is

1 really a two-legged stool. It provided
2 compulsory binding arbitration during the
3 pendency of which all wages, hours, terms and
4 conditions of employment must be maintained.

5 The legislature recognized the strong
6 nexus between maintaining morale and performance
7 and efficiency of the department, that where
8 morale is upheld, which Act 312 accomplishes,
9 then performance and the efficiency of that
10 department are accomplished. Conversely, where
11 morale is attacked or officers are demoralized,
12 that adversely impacts the efficiencies of the
13 department, that compromises public safety.

14 On March 16, 2011, Governor Synder
15 signed into law Public Act 4 which replaced its
16 predecessor Public Act 72. Public Act 4
17 established the process for local units of
18 government, of which the city of Detroit is one,
19 to deal with, respond to and address a situation
20 of financial distress. It established and either
21 or process. Either the governor could appoint
22 what's termed an emergency financial manager. Or
23 if that was not palpable then the city and the
24 state could negotiate a consent agreement. One
25 significant legal distinction separated the EFM

1 from the consent agreement situation; that being
2 the EFM and only the EFM was conferred with
3 statutory and powerful tool in dealing with
4 public employees wages, hours and terms and
5 conditions. A powerful tool, a tool being that
6 the EFM would have the authority to rewrite
7 collective bargaining agreements to impose
8 whatever wages and hours and terms and conditions
9 of employment that the EFM deemed appropriate.

10 In my view it was a tool that was not
11 assigned or exist in the realm of a consent
12 decree. Shortly after PA4 was passed in March of
13 11, the City of Detroit approached the DPOA in
14 December of 2011 and asked it to reopen its
15 contract which was due to expire on June 30, 2012
16 indicating that it needed additional concessions
17 to help alleviate its fiscal situation. The DPOA
18 was reluctant for not only the obvious reasons,
19 but importantly for the reason that it believed
20 any additional concession would compromise public
21 safety. Its rationale behind that was very
22 simple; for the past 10 years the Detroit Police
23 Department has been experiencing withering
24 attrition, internal, a thousand fewer officers
25 today than 10 years ago. It come with -- the

1 problem attrition has not been a reduction in
2 crime. In fact, it's been a spike and a
3 continued surge in crime, which means officers
4 who have been left behind are continually worked
5 at an incredibly high rate. Their work load is
6 overwhelming and they're doing so under extremely
7 stressful and dangerous conditions which only
8 perpetuates the turnover problem. On top of this
9 the city was reluctant -- the City of Detroit for
10 the past 15 or 20 years has been very successful
11 in its unrelenting attack on police officer pay
12 checks. Mind you, it was done by and through
13 largely Act 312. But it has been successful in
14 compressing DPOA compensation to the point that
15 Detroit Police Officers' compensation pales in
16 comparison to officers in surrounding and
17 national departments. And we've provided the
18 evidence to support that proposition verified
19 complaint Exhibit O and verified complaint
20 Exhibit P1.

21 Just to highlight that example, your
22 Honor, we provided a chart that shows the top 50
23 largest salaries; the salaries for the top 50
24 largest department. And Detroit, if the CETs are
25 permitted to proceed, would reduce the maximum

1 pay for an officer to \$47,900. By contrast, of
2 all the top 50 largest departments, there's not a
3 single one that pays its officers below \$52,000.

4 The city has succeeded in composing a
5 compensation package that is simply
6 non-competitive. The reason that compromises
7 public safety is because officers like everyone
8 else have to make ends meet, have to provide for
9 their family. They're professionals and they
10 have portable skills. And they can take those
11 skills and leave the department, which they've
12 done for the last 10 years and which the CETs are
13 going to accelerate because as we've indicated in
14 our verified complaint and as attested to by DPOA
15 president, Joe Dunkin, 63 officers have left
16 since June 1 which is incredible acceleration in
17 turnover. Quite frankly, public safety does not
18 exist where there aren't police officers to
19 respond to calls. And that's the situation that
20 the city of Detroit finds itself in this moment.
21 It is deteriorating; the police department is
22 dissolving before our eyes.

23 The final reason the DPOA was
24 reluctant to sit down with the city is because
25 less than six months earlier, July of 2011, the

1 city and DPOA negotiated what the current mayor
2 Bing determined historic concessionary agreement.
3 They were able to collective bargain an agreement
4 that the mayor quantified as producing more than
5 \$100 million in savings to the city of Detroit.
6 It was all done on the backs of police officers.
7 It included and extended to wage freeze another
8 three years. It resulted in a radical
9 restructuring of pension benefits. Just to put
10 those pension benefits in context, the DPOA and
11 the city agreed the first major department in the
12 country to do away with the defined benefit
13 pension plan and replace it with a defined
14 contribution plan, reduced the -- eliminated the
15 pension annual escalator for pensioners. It
16 reduced pension multiplier 2.5 percent to 2.1
17 percent. And just to kind of flush that with
18 some context, your Honor, when Governor Snyder
19 articulated his best standards, best practices
20 for public employees on pension, he said police
21 officer multiplier should be 2.2 percent. We
22 provided comparative data as well that shows, for
23 example Wayne County Sheriff, their pension
24 multiplier is 2.5 percent. For a state trooper
25 it's 2.4 percent. All of this collectively

1 continues to feeds the turnover churn which in
2 turn impairs public safety.

3 With that caveat the DPOA expressed
4 its willingness to sit down with the city. The
5 city agreed. The major recognized Detroit Police
6 Officers were underpaid and took pay cuts off the
7 table. And in that context the DPOA and the city
8 over the next three months collectively bargained
9 a tentative agreement which was reached on
10 February 9, 2012 and was to produce nearly \$26
11 million in additional savings to the city. That
12 included an additional three-year wage freeze
13 which would have meant the Detroit Police
14 Officers would have gone more than seven years
15 without a pay increase. In the law enforcement
16 world it's unheard of to go more than one or two
17 years.

18 It also included other radical
19 restructure of work rule changes. As soon as
20 that tentative agreement was reached, the city
21 essentially cut off all communication with the
22 DPOA. They refused to ratify the agreement, and
23 it turned its attention to the state where it was
24 able to negotiate a consent agreement pursuant to
25 PA4. The consent agreement was termed financial

1 stability agreement which I think is marked as
2 verified complaint exhibit A. The critical point
3 in the financial stability agreement is section 4
4 which deals with the duty to bargain. In
5 essence, the City and the State contracted the
6 DPOA out of it's right to bargain and its Act 312
7 rights. That was all done pursuant to and
8 authorized by Public Act 4.

9 Despite this fact the DPOA proceeded
10 with its statutory Act 312 rights. It submitted
11 the issue to mediation in May. It attended
12 mediation in June, which was unsuccessful.
13 Because mediation was unsuccessful it filed its
14 Act 312 petition on June 22nd. The invocation of
15 Act 312 carries with it significant legal
16 consequences. It triggers the coverage and
17 protection of MCL 423.243, which the Michigan
18 Supreme Court, I believe it's an '85 case Ottawa
19 County held once you invoke Act 312 there can be.
20 No further changes to wages and hours and terms
21 and conditions of employment as of that date.

22 As of June 22nd, 2012, there were no
23 10 percent pay cuts. There were no fringe
24 benefit cuts. There were no 12 hour shifts.
25 There were none of the any other multitude of

1 changes that are enumerated in the CET. That
2 large is because CET didn't exist at that point
3 in time. Notwithstanding that fact, the city
4 advised the DPOA that it was going to exercise
5 its rights under FSA Section 4 pursuant to Public
6 Act 4 to terminate the contract on June 30th and
7 thereafter at some point in the future to impose
8 unannounced and unknown wages, hours, and terms
9 and conditions of employment, unannounced and
10 unilaterally created non-negotiated wages, hours,
11 terms and conditions.

12 That required that the DPOA take
13 immediate legal action. The legal action it took
14 was to file a six count complaint before the
15 court of claims. That was on or about June 25th,
16 your Honor. There's a couple of critically
17 important facts and legal questions that
18 distinguish that case from the case that's before
19 you. The six count claim was filed because the
20 city said pursuant to Public Act 4 we're
21 exercising our FSA Section 4 rights which allow
22 us to terminate the duty to bargain. And we
23 interpret that to mean you no longer have Act 312
24 rights because PA4 does away with ACT 312 right.
25 And the state treasurer pursuant to 4.4 has made

1 the determination we no longer have a duty to
2 bargain. So there was state action by and
3 through concerted action between the city and the
4 state to deprive the DPOA of its Act 312 right.
5 It was undertaken by and through a contract in
6 which the state was a party to, and PA4 served as
7 the legal foundation. That triggered the court
8 of claims exclusive jurisdiction because the
9 legal question in that case unlike this case was
10 what impact does PA4 have on Act 312. What
11 impact, if any; does it impact the applicability,
12 the enforceability, its meaning. What is the
13 interplay between Public Act 4 and Act 312?

14 The DPOA argued and maintained its
15 position that PA4 has no legal effect, but it was
16 unsuccessful in making that argument because as
17 the city argued --

18 THE COURT: I that part of your
19 argument also was Act PA4 was unconstitutional.

20 MR. IORIO: We did. That was one of
21 the counts. That count has not yet been --

22 THE COURT: And she denied your
23 relief on both issue.

24 MR. IORIO: I don't believe we asked
25 for injunctive relief on the constitutional

1 claim.

2 THE COURT: Well, she couldn't give
3 you that.

4 MR. IORIO: She hasn't ruled on that
5 as far as we know, your Honor.

6 THE COURT: Okay.

7 MR. IORIO: She only ruled on the
8 preliminary injunction which came on July 9th.
9 She denied the DPOA's preliminary injunction on
10 the basis that PA4 by and through the FSA
11 eliminates section 4 because by and through
12 section 4, since section 4 eliminates the duty to
13 bargain and the state treasurer determined there
14 is no duty to bargain, then no Act 312 injunction
15 can issue.

16 Three days later, the city of Detroit
17 on July 12th presented the financial advisory
18 board which is a PA4 creature. What it
19 unilaterally prepared and crafted is city
20 employment terms. These were unknown to the DPOA
21 and certainly hadn't been negotiated. The
22 financial advisory board at that time approved
23 the CET. The DPOA learned that city council was
24 scheduled to vote on the same on or about July
25 16th and immediately presented city council

1 briefing paper that explained that neither the
2 city nor police officers could afford the cuts
3 for the reasons I've articulated, largely because
4 it jeopardizes public safety. It appeared before
5 city council on July 16th where DPOA president,
6 Joe Dunkin made the same presentation and city
7 council agreed. It rejected the CETs.

8 Nonetheless on that same day, your
9 Honor, the mayor issued a two-page order imposing
10 the CET. And we've attached that order as
11 verified complaint Exhibit G. That order states
12 that it implements the CETs. But more
13 importantly it provides the expressed legal
14 authority that the city believe it had in order
15 to change wages, hours and terms and conditions
16 of employment from those that existed on June
17 22nd. The authority was Public Act 4. On August
18 3rd came the transformative moment in this
19 particular case. That's when the Michigan
20 Supreme Court in stand up for democracy granted
21 plaintiff's writ for mandamus compelling state
22 board of canvassers to certify PA4 as referendum
23 petition. In so doing, that triggered the
24 application of Article 2 section 9, which I'll
25 get to when I get to my legal analysis.

1 Within a business day, on August 6th
2 the attorney general issued his opinion letter
3 discussing the legal impact of certification on
4 PA4 and correctly concluded in unmistakably clear
5 language that PA4 is suspended and is rendered
6 inoperative.

7 On August 8th, the state board of
8 canvassers certified PA4, which triggered the
9 application of Article 2 section 9, the effect of
10 which PA4 is no longer in operation. As a
11 result, the DPOA sought confirmation that the
12 city would comply. The city indicated that it
13 would not, that it intended to proceed to operate
14 pursuant to PA4, as it has not been suspended by
15 and through the implementation of its condition
16 of the employment, by and through the changes to
17 DPOA wages, hours, term and conditions of
18 employment. That has lead us to your doorstep,
19 your Honor, by and through its two count
20 complaint. It's seeks declaratory and injunctive
21 relief. And I'll turn to the four traditional
22 elements of injunctive relief and apply those at
23 this point to count one.

24 Count one asks this Court to stop the
25 city from continuing to operate pursuant to PA4

1 because of Article 2 Section 9. Turning first to
2 the injunctive element likelihood of success, the
3 DPOA has likelihood of success because it's legal
4 condition and theory is anchored to the
5 Constitution, and it's anchored to the
6 controlling case authority. The controlling case
7 authority being the 1971 supreme court decision
8 is Kuhn v. Department of Treasury, as well as
9 2000 court of appeals decision, Reynolds v. State
10 Bureau of Lottery.

11 Turning first to the constitution, I
12 would quote Article 2, Section 9 which is really
13 the foundation for DPOA's count one argument. It
14 states and I quote. "No law as to which the
15 power of referendum properly has been invoked
16 shall be effective thereafter unless approved by
17 a majority of the electors."

18 It's interesting to note that Article
19 2 Section 9 is so clear that none of defendants,
20 proposed intervenors or corporation counsel
21 disagree that PA4 is suspended by virtue of
22 Article 2 Section 9. Yet, the city attempts to
23 request an alternative interpretation to Article
24 2 Section 9 ordinary meaning. Essentially that
25 interpretation is that it be permitted to

1 continued to operate pursuant to PA4 despite the
2 fact it is no longer in effect. The Michigan
3 Supreme Court in the Adar case, which I believe
4 is one of the cases cited by intervenor Bing in
5 its motion in opposition to the DPOA, has stated
6 that the constitution is of the people and by the
7 people. It goes on to state that when
8 interpreting and applying the constitution the
9 guiding force, the interpretive construction
10 that's to be signed is what is the ordinary
11 meaning, what would reasonable minds agree as it
12 relates to the text data used.

13 I think in this case the focal point
14 of the dispute is what does effective thereafter
15 mean. The ordinary meaning of effect, according
16 to Black's Law Dictionary Sixth Edition is to do,
17 to produce, to make, to bring to pass, to
18 execute, enforce, accomplish the operation of the
19 law, going into operation. When PA4 is in effect
20 arguably that means that it's able to do what
21 it's not able to do today. By that I mean it
22 would be able to use PA4 as an instrument to
23 effectuate the change it seeks to impose upon
24 DPOA officers by and through the CETs. It was be
25 able to put into effect the CETs. That's what

1 effect means according to its ordinary term. So
2 when PA4 is no longer in effect, then the
3 converse is true; that the city can no longer
4 continue to do what it's attempting to do because
5 its legal authority no longer exists.

6 THE COURT: You have no case law to
7 support that the actions taken under PA4 are void
8 ab initio.

9 MR. IORIO: I believe Article 2
10 Section 9 reach that conclusion, as I believe
11 Reynolds v. Bureau of State Lottery which cited
12 approvingly and adopt the holding from the 1927
13 Arizona Supreme Court case which said,
14 essentially, a properly invoked referendum
15 petition nullifies the targeted measure. There
16 can be no other reasonable interpretation other
17 than PA4 in not in effect. We're simply asking
18 that the Constitution be enforced and applied as
19 written.

20 We also indicate, your Honor, the
21 city has not cited any authority whatsoever to
22 suggest that it gets to continued to operate
23 pursuant to PA4.

24 THE COURT: I don't think they're
25 arguing that. I think they're arguing that what

1 they have done is still valid.

2 MR. IORIO: Right. Which in essence
3 would lead to the conclusion that it is allowed
4 to continue to operate as if PA4 allows them to
5 do so.

6 THE COURT: No they're not allowed to
7 continue under it because there are a lot of
8 other measures they could have taken and could
9 take under PA4, and they have chosen not to do
10 that.

11 My question to you is, you want to go
12 back to the status quo; why is the status quo not
13 the CETs that were entered into by the city --
14 well, enacted by the city based on their
15 financial need?

16 MR. IORIO: I think that's a great
17 question. The answer to that is multifaceted.
18 First, it's not the status quo because Michigan
19 Supreme Court says it's not. Ottawa County v.
20 Kalinski (ph) says, the status quo is that which
21 existed at the time Act 312 was invoked. At the
22 time Act 312 was invoked there were no ten
23 percent pay cuts. There were no fringe benefits
24 cuts. There were no 12 hour shifts. Kalinski
25 has been followed in a number of cases that

1 clearly holds that where Act 312 has been
2 invoked, and there's no dispute Act 312 has been
3 invoked. It was invoked on June 22nd that that's
4 the status quo.

5 Secondarily, we believe June 18th is
6 not the status quo because that would require
7 Article 2 Section 9 to be sides aside. The only
8 way July 18th could be the status quo is if PA4
9 is in effect; it is not. It also would require
10 the complete rejection of Act 312 as it currently
11 exist today. The legal context that exist today
12 is Act 312 stands alone and has absolutely no
13 impact whatsoever by virtue of PA4 because of
14 August 8th, 2012 and the certification if the
15 referendum.

16 Thirdly, we submit July 18th is not
17 the appropriate status quo because it's not the
18 legal status quo. The legal status quo
19 contemplates what was the last mutually agreed to
20 wages, hours and terms and conditions of
21 employment that were in existence. The CETs are
22 nothing more than the city's unilaterally
23 prepared wish list of what it hopes to achieve,
24 what it would like to achieve, all in the absence
25 of collectively bargaining. And that is in

1 complete defiance of the Michigan Supreme Court
2 case DPOA v. City of Detroit 391 Mich 44 (1974)
3 the Michigan Supreme Court held that on mandatory
4 subjects of bargaining, and that's clearly what
5 we're dealing with, wages, hour and terms and dig
6 conditions of employment, the employer is
7 required to bargain in good faith. And absent
8 impasse in negotiations there can be no
9 unilateral changes. With that, a holding which
10 was reaffirmed in the unpublished case, Clinton
11 Professional Firefighters v. City of Flint where
12 the court of appeals stated and I quote, where
13 the collective bargaining agreement has expired,
14 all parties have a duty not to unilaterally
15 change its status quo.

16 THE COURT: Counsel, I've issued
17 injunctions under those conditions. Those are
18 not the conditions here. Of course, an employer
19 cannot impose conditions once Act 312 has been
20 invoked. I've issued those injunctions, but
21 that's not what we're talking about here.

22 MR. IORIO: We respectfully disagree.
23 I believe implicit within that comment is that --
24 that there's some legal basis that allows the
25 city to do that; that legal basis is PA4 and PA4

1 is no longer effective. It no longer gives
2 operation. We've also indicate that it's not the
3 appropriate status quo. Particularly, intervenor
4 Bing in its brief, pages 6 through 8 attempts to
5 make the analogy that this is really analogous to
6 a situation where a statute has been repealed or
7 where a statute has been amended. It went all
8 the way to Nebraska to try to find a case to
9 support it's position, which, in fact, it was
10 completely misrepresented. It doesn't stand for
11 the proposition --

12 THE COURT: Actually, they only had
13 to go to Lansing and upstairs to Judge Murphy's
14 courtroom.

15 MR. IORIO: I'm going to get to Judge
16 Murphy. I don't believe that's controlling, and
17 I don't believe that applies either. Well, they
18 chose to go to Nebraska.

19 THE COURT: It's not controlling, but
20 he's my colleague who I have a great deal of
21 respect for. I read the transcript, and I
22 thought he did a fine analysis.

23 MR. IORIO: I'll get go Judge Murphy
24 after I hit this point. As it relates to the
25 Haskel case, that actually supports the DPOA's

1 position. In Haskel --

2 THE COURT: Okay. Those are the
3 legal matters. I need you to get to the harm to
4 the public interest if this injunction is issued.
5 This is a significant issue.

6 MR. IORIO: Can I first get to the
7 Judge Murphy real quickly.

8 THE COURT: Sure.

9 MR. IORIO: We understand Judge
10 Murphy is a colleague. Judge Kustis (ph) as well
11 is a colleague. And last year she issued a TRO
12 under identical circumstances. The Judge Murphy
13 situation --

14 THE COURT: When Act 4 wasn't even
15 law?

16 MR. IORIO: PA4 was law. We've
17 attached that order. I think it's verified
18 complaint exhibit -- give me one second, your
19 Honor. Verified complaint Exhibit Z.

20 Turning back to Judge Murphy, we
21 believe the transcript doesn't tell the full
22 legal context in which that case exist. We
23 provided the complaint. I think the complaint
24 indicates -- really the legal question in that
25 case is whether PA72 is revived by virtue of PA4

1 being suspended. We don't disagree with that.
2 Quite frankly, if PA727 is revived it bolsters
3 the DPOA's position because PA72 did not allow
4 the city to impose the CET that it's attempting
5 to do at this point in time. Nor is the
6 transcript a final and appealable order at this
7 point in time, so we don't know what Judge Murphy
8 is ultimately going to order.

9 More importantly it's distinguishable
10 because it doesn't deal with police officers.
11 Police officers, whether we like it or not, enjoy
12 special statutory treatment under Act 312. That
13 was not an Act 312 case; this is.

14 Turning -- if I could finalize my
15 argument as it relates to the status quo.

16 THE COURT: Sure.

17 MR. IORIO: I think the city's
18 argument crumbles under its own logic. I think
19 it was best exemplified by intervenor State's
20 argument when it stated even if PA4 rejected by
21 the voters, it's still going to proceed as if PA4
22 exist. And it's still going to proceed pursuant
23 to the FSA.

24 THE COURT: I think that opens up a
25 whole new legal quagmire if it's approved it

1 should be repealed, then we get into whether the
2 action taken under PA4 are valid and binding.
3 But we're not to that point yet.

4 MR. IORIO: We respectfully believe
5 we are in the same legal posture. I think it
6 provides a window into what the city and the
7 state are thinking, which is we can disregard the
8 constitution and we can contract our way to a
9 veto of the people's power. And can simply
10 ignore Article 2 Section 9 which again says
11 because PA4 is not in effect you can't do these
12 things.

13 Finally, on the status quo, your
14 Honor, if we're going to look at what the status
15 quo is, why wouldn't we look to August 8th, which
16 is the date of the certification. August 8th
17 what were the wages, hours and terms and
18 conditions of employment? They were no 10
19 percent pay cut. They were no 12 hour shifts.
20 They were none of the other fringe benefits.
21 They were none of the CETs. The CETs were not
22 impose, I think according to the city's own
23 document which we've attached as verified
24 complaint Exhibit Y page 2. The fourth column
25 lays out all of the implementation dates. For

1 example, a 10 percent pay cut didn't come into
2 fruition until August 24th for hours worked after
3 August 8th. So the status quo -- if the Court
4 is inclined to suggest that June 22nd is not the
5 status quo, we would submit the most appropriate
6 status quo would be what were the wages, hours
7 and terms and conditions of employment that
8 existed as of August 8th. And they were not 10
9 percent pay cut, fringe cuts, or the 12 hours
10 shifts.

11 I believe you wanted me to address
12 the irreparable harm issue, which is where I'm
13 going, your Honor. Irreparable harm in this
14 case, and I will restrict myself to count one, or
15 do you want me to do both counts?

16 THE COURT: Do both, please.

17 MR. IORIO: Okay. The irreparable
18 harm in this case, your Honor, first as it
19 relates to count one is multifaceted. We're
20 dealing with irreparable harm, the constitution.
21 The constitution Article 2 Section 9 in plain and
22 unambiguous text says PA4 is no longer in effect.
23 Accordingly, it can no longer be used to allow it
24 to implement the acts that were exclusively
25 allowed under PA4, and that is the CETs. The

1 constitution says that the people get the final
2 say as to whether or not PA4 gets to remain in
3 operation. There's no purer form of democracy
4 than a properly invoked petition, as in this
5 case, where more than 200,000 Michiganders have
6 spoken and said we want the opportunity to be
7 able to speak on a particularly divisive piece of
8 legislation. And the Constitution recognizes
9 that right. And The Michigan Supreme Court in
10 Kuhn says we need to do what's necessary to
11 effectuate and facilitate the will of the people,
12 not hamper and destruct. And what will
13 facilitate the will of the people is to let them
14 speak on November 6th. And in the interim
15 period, PA4 to remain -- is not to remain in
16 effect. It's to be suspended. And as the
17 attorney general said, it's no longer in
18 operation.

19 So the first injury is to the
20 Constitution's democracy to the will of the
21 people. The second irreparable harm with respect
22 to count one, and it has some overlap on count
23 two, so I'll address this harm collectively.
24 There's irreparable harm to public safety. A
25 government exists to protect its people and its

1 property. That's done in Detroit largely on the
2 backs of Detroit Police Officers who do so by the
3 performance of their duties, who do so with
4 having a sufficient numbers of officers available
5 to respond to the citizens calling for
6 assistance.

7 In this case today, your Honor, the
8 Detroit Police Department is seriously broken.
9 It's broken because its officers are broken.
10 They're demoralized. They're demoralized because
11 for the past 10 years, and it's only recently
12 we've seen an uptake in this, turn over has
13 exploded. And those vacancies have not been
14 replaced. When turnover exists and those
15 vacancies are not filled and crime continues to
16 spiral out of control, the officers left behind
17 have a greater workload, continue to work in far
18 more dangerous working conditions. And that only
19 feeds burnout which only feeds the turnover
20 problem.

21 When you add to that layer what exist
22 in Detroit, which is paying it's police officer
23 an uncompetitive rate, then you have a recipe for
24 disaster because officers are expressing their
25 displeasure and the fact they're demoralized with

1 their feet. They're leaving. Sixty-three
2 officers since June 1st have left. More are on
3 the way. More than 500 have signed petition
4 we've provided in verified complaint making it
5 very clear that they're barely making ends meet
6 before the 20 cut, that they're professionals and
7 have portable skills and they will have to leave.

8 I think the city fails to recognize
9 it cannot provide public safety without its
10 Detroit Police Officers. They're an
11 indispensable ingredient in that formula and yet
12 they're completely being ignored and disregarded.
13 The problem that we see with respect to
14 irreparable harm is because officers are fleeing.
15 The public which is already -- whose safety is
16 already jeopardized shouldn't be compromised any
17 further. So there's irreparable harm to public
18 safety which the CETs will only accelerate
19 because it's going to force officers to flee the
20 department.

21 For example, we attached president
22 Dunkin's supplemental affidavit. He received
23 word from the Toledo Police Department they're
24 hiring 75 officers and they want Detroit's
25 finest. And they want them because of the

1 experience and because they recognize that
2 Detroit Police Officers are to the point where
3 they've been pushed beyond the brink and they're
4 going to leave and continue to leave. So there's
5 irreparable harm to public safety. There's
6 irreparable harm to the individual officers as
7 well. We recognize that traditional forms of
8 financial injury typically don't constitute
9 irreparable harm. However, there are cases which
10 say where you're dealing with impending fiscal
11 ruin or financial ruin, it may constitute
12 irreparable harm. I'm talking about the State
13 Employees v. Department of Health (1985) case.

14 In particular, the Michigan Supreme
15 Court in that case quoting from the U.S. Supreme
16 Court case says, and I quote, "the availability
17 of a backpay award several years after dismissal
18 scant justice for a government employee who may
19 have long since been evicted from his home and
20 found himself forced to resort to public
21 assistance in order to support his family. It's
22 little solace to those who are so injured to be
23 told their plight is normal." It goes on to
24 state -- The supreme Court goes on to state, we
25 do not hold that the absence of usable resources

1 and attainable alternative sources of income with
2 which to support oneself and one's dependents
3 coupled with the prospect of destitution, serious
4 physical harm, or loss of irreplaceable treasured
5 possessions can never support of finding of
6 irreparable injury in an appropriate case.

7 The DPOA submits that this is the
8 appropriate case. We've submitted affidavits of
9 officers who are foregoing medical treatment
10 because they can't afford it. I direct your
11 attention to verified complaint Exhibit Q-1 where
12 officer Ewing has stated and I quote, "just to
13 make ends meet I've been forced on occasion to
14 collect pop bottles for cash fund. I've lived
15 off payday advance loans for years, and I've
16 changed my employment status to 1099 to defer
17 paying taxes on my income. Due to my financial
18 hardship I've been forced to sell portions of my
19 vacation time. Even with all these drastic
20 measures I only had \$26 left over from my last
21 paycheck after paying monthly bills. My wife is
22 currently on ten medications and I cannot afford
23 to get some of her medications filled. There is
24 no worse feeling than not being able to care for
25 your wife and family."

1 We direct your attention to verified
2 complaint Exhibit Q-2, officer Iceman (ph) who,
3 as you stated, was recently forced to file for
4 bankruptcy, was forced to sell our family
5 vehicles, and he lives only on the bare basics.
6 And in order to clothe his children he has to go
7 to the thrift shop.

8 We direct your attention to verified
9 complained Exhibit Q-3, officer Stephan, who says
10 he and his wife lives in an apartment because
11 they left their house due to short sale. He goes
12 on to say in the event I am sick or injured I
13 avoid going to the hospital or doctor's office so
14 I do not incur further medical costs that I
15 cannot afford. I anticipate that my credit
16 rating will also suffer as a result because I
17 will not be able to make certain payments and
18 will be forced to increase my credit card debt.
19 I will be forced -- I've already been forced to
20 prioritize my bills and decide which I will pay
21 and which I will not.

22 We offer the affidavit of Lisa Ray
23 who says, I've already been forced not to fill
24 her daughter's prescriptions on certain
25 occasions. When I cannot afford her prescripts

1 it's only going to get worse. I pay
2 approximately \$75 per month in prescription drug
3 costs, and I anticipate those cost will more than
4 double under the city's changes.

5 That's the type of injury that awaits
6 Detroit Police Officers. They were barely making
7 ends meet. More than 500 have indicated they
8 were barely making ends meet before. And they've
9 exercised their right to leave as attested to by
10 Officer Pitt, a 17 year veteran who moved to
11 Atlanta. He didn't even have a job lined up, but
12 he knew that staying in Detroit and policing in
13 Detroit was going to kill his family because he
14 couldn't provide for them.

15 Officer Estrada, an 18 year veteran
16 who left the department, took this training that
17 the city invested in and went to the Chrysler
18 Executive Protection Unit because he had to make
19 ends meet for his family and couldn't do so under
20 the CET, couldn't do so under \$47,000 when he
21 knows every surrounding and local department pays
22 more. And they have better working condition,
23 greater chance that officers will be able to
24 return home at the end of their shift.

25 So the irreparable harm, your Honor,

1 as it relates to count one; constitution,
2 compromising the public's safety, as well as the
3 individual police officers. Count two deals with
4 the individual injury to Act 312.

5 We cited I believe in our reply brief
6 a court of appeals decision Attorney General v.
7 Power Pick Players Club of Michigan where quoting
8 from a supreme court case, the court of appeals
9 held, "at common law acts in violation of law
10 constitute a public nuisance. Harm to the public
11 is presumed to flow from the violation of the
12 valid statute enacted to preserve public health,
13 safety and welfare."

14 Act 312 is the quintessential example
15 of a statute that was enacted to protect and
16 preserve public health, safety and welfare. We
17 know that because the legislature has embedded
18 its strong public policy right into the statute.
19 423.321 clearly and unambiguously states that it
20 is the public policy of the state that in public
21 police and fire departments where the right of
22 employees to strike by law is prohibited it is
23 requisite to the high morale of such employee.
24 And efficient operation of such department to
25 afford an alternate expeditious, effective and

1 binding procedure for the resolution of such
2 disputes. And to that end the provisions of this
3 act providing for compulsory arbitration shall be
4 literally construed.

5 So the public policy in this case,
6 Act 312, will be irreparably harm. Again, it's a
7 two-legged stool, one of which is compulsory
8 arbitration. The other leg is maintaining the
9 wages, hours and terms and condition of
10 employment. The city seeks to do away at this
11 point in time with the status quo injunction.
12 However, that is going to bring and has already
13 brought to bear dire consequences the Michigan
14 Supreme Court in Dearborn Firefighters, a 1975
15 case, warn about would occur if police officers
16 and firefighters would no longer have the
17 protection of Act 312.

18 The dire consequences in this case
19 are already being experienced in the streets of
20 Detroit because officers are leaving. The police
21 department is disintegrating, and the public
22 safety is being compromised. So the irreparable
23 harm exists as it relates to Act 312, as well,
24 your Honor.

25 423, as you've indicated, you've

1 issued 423 for injunction. You're well versed
2 with that, and you understand that.

3 THE COURT: It's usually under
4 conditions that if I don't issue an injunction,
5 the union would effectively be dissolved. There
6 would be no union.

7 MR. IORIO: That's the situation
8 we're talking about right now.

9 THE COURT: No.

10 MR. IORIO: Absolutely, because we
11 believe --

12 THE COURT: So you believe all of the
13 officers from the city of Detroit are going to
14 leave, and there won't be a union? That's not
15 the city's position. In fact, they have retained
16 90 percent of your bargaining rights. Other than
17 wages and hours, those are the only two things.

18 MR. IORIO: And terms and conditions,
19 which is everything.

20 THE COURT: But you still have your
21 grievance procedure, the arbitration.

22 MR. IORIO: After the city gets the
23 CET, it's whether or not it follows it.

24 THE COURT: I read that CET; that is
25 not what it says.

1 MR. IORIO: There's countless
2 documents and public statements where the city
3 has made it clear they reserve the power to do
4 what ever it wants.

5 THE COURT: They have it written;
6 it's written that you retain all those.

7 MR. IORIO: So they say. We
8 obviously disagree with that. We believe first
9 and foremost there's injury to the police
10 department. There's not going to be a police
11 department left, your Honor, if the city is
12 permitted to get away with disregarding the
13 constitution, as well as Act 312. There is --

14 THE COURT: Okay. I'm going to save
15 you some rebuttal time. I'd like to hear from
16 opposing counsel.

17 MR. JARVIS: Years and years ago when
18 I started working for the City of Detroit, they
19 said it was an easy job. Public Service is not
20 easy. That's why you sit on the bench and have
21 to make decisions that are hard. People who are
22 elected to public office have to make decisions
23 that are hard that affect residents of the city
24 of Detroit. But over all, they have to look at
25 the survivability and the viability of the city

1 of Detroit.

2 On a personal note, 2009, Judge, I
3 received a 10 percent wage reduction like a lot
4 of other city employees. It goes as today with a
5 10 percent wage reduction for myself.

6 The police officers and firefighters
7 of the city are the last people who are going to
8 receive the 10 percent wage reduction, Judge.
9 And that's because the City did everything it
10 could to save them from that reduction. But the
11 time has come where that has had to occur, Judge.
12 It's not an easy decision, but looking at the
13 overall viability of the city of Detroit, it's a
14 decision that had to be made. I'm sorry that it
15 did because I have friends in this room who may
16 not be my friends anymore, but I have to argue on
17 behalf of the city that it was a necessary move.

18 Judge, the CETs were imposed on the
19 18th of July when Public Act 4 was still viable;
20 it's currently suspended. The CETs are the
21 status quo. There's been some argument today
22 that somehow the 10 percent wage cuts only took
23 effect -- only became effective with the August
24 8th payroll. We have a PPS system in the city of
25 Detroit, Judge, that dates back from the

1 seventies. It took two payroll cycles to
2 implement the reduction for the police
3 department. After the 18 of July, the first
4 meeting with respect to the payroll reduction for
5 the police department, took place on July 23rd.
6 They have to figure out how to do it. They had
7 to input all those changes, had to run through
8 two payroll cycles running tests programs. And
9 finally on the 24th of August that's when the 10
10 percent took effect, Judge. When Public Act 4
11 was in place, not suspended, the CETs were
12 properly imposed; that's the status quo, Judge.

13 Harm to the public, I guess I'd like
14 to address that first because it's something I
15 think we all can be concerned about. This TRO
16 should not issue, Judge, based on mere
17 speculation. The City of Detroit Police
18 Department has always had an attrition rate of
19 about 25 to 50 officers per month depending on
20 the time of year. It's unfortunate when a police
21 officer gets to their 20 or 25 years anniversary
22 and decide to move on to do something else. I
23 wish we could do something else, but we don't
24 have the finances available to bring even a new
25 class at this time.

1 What's the harm to the public? If
2 this package, the CETs are not put in place,
3 Judge, we're going to face a catastrophic failure
4 of the city's finances; that's what's going to
5 happen. It's there for a reason. There's nobody
6 in this building or anywhere in the executive
7 offices around this city who's got it in for the
8 Detroit Police Department. These are changes and
9 things that had to be done.

10 Every executive at the Detroit Police
11 Officer started off as a PO and they had to work
12 their way up. They have friends who are still
13 POs in the lower ranks. They understand the
14 stresses of the job. They understand demands.
15 But overall, Judge, the harm to the public if
16 this TRO issues will be catastrophic for the
17 city.

18 With respect to irreparable harm,
19 Judge, they can't show irreparable harm with a 10
20 percent wage cut. Simply put, it's fear,
21 apprehension, speculation that there's going to
22 be a mass exodus from the police department.
23 They can't show that. The CETs were properly put
24 in place under Public Act 4. I don't see or
25 haven't heard anything here much different than

1 what was argued in front of Judge Manderfield in
2 Ingham County. Many of the same arguments made
3 today with respect to Act 312 were made there,
4 and Judge Manderfield addressed those.

5 With respect to 312 it certainly
6 supplement para and the duty to bargain. And
7 that was suspended under Public Action 4. The
8 CETs were properly imposed. I'm sorry that it
9 had to come to that, but that's just the
10 realities of the way we're working today, Judge.
11 The City has done everything it can to prevent
12 these 10 percent reductions for the police
13 department. They're the last detail that had to
14 be done with the city.

15 I covered a lot of issues in my
16 brief. If you have any questions, I'd be happy
17 to answer them.

18 THE COURT: No. Thank you. Counsel.

19 MR. SERYAK: Richard Seryak appearing
20 on behalf of the mayor. Your Honor, I believe
21 this is the basis for Judge Murphy's ruling. It
22 goes to probabilities, success on the merit, the
23 plaintiff's burden. If they cannot meet that,
24 the election code section 168.477 specifies what
25 thereafter mean in the constitution. Counsel

1 kind of schlepped over the word thereafter. If
2 you ignore the word thereafter, you can try to
3 make an argument that suspension means more than
4 just suspension. Suspension is not
5 nullification. Section 2 in the school code says
6 that the law that is the subject of the
7 referendum continues to be effective and the
8 referendum -- continues to be effective until
9 the referendum is properly invoked, which occurs
10 when the board of state canvassers make official
11 declaration of the sufficiency of the referendum
12 petition. That was done on August 8th. So state
13 statute makes it clear that actions taken prior
14 to August 8th, an imposition of the employment
15 terms, the city employment terms. And that order
16 of imposition was issued July 17th our 18th, but
17 that's when it was imposed.

18 Those conditions were lawful then, by
19 virtue of the election code. They were lawfully
20 imposed. They were valid. They're binding, and
21 they survived. And actions taken pursuant to the
22 financial stability agreement in the order of
23 imposition, the employment terms. Even though
24 they may be implemented; it may take weeks to
25 implement, those are still lawful terms. And

1 they are enforceable and binding. And that's the
2 status quo that must be honored as of today. We
3 recognize and we don't dispute that as of August
4 8th we now have a duty to bargain. And there
5 will be arbitration proceedings. But the key is
6 what's the baseline that the arbitrator or the
7 parties will look at for purposes of
8 negotiations. It's the terms and conditions of
9 employment imposed by the city on July 18th;
10 that's the status quo. Those are the terms.

11 Plaintiff wants to go back to a
12 contract that expired the end of last year and
13 argues that's the status quo. That can't be the
14 status quo. It has to be the terms that were
15 lawfully imposed in July. Those are the terms
16 that were in existence as of August 8th. They're
17 not nullified. The statute says they're
18 effective. And, therefore, we submit the
19 plaintiff cannot show likelihood of success on
20 the merits. That was the basis for Judge
21 Murphy's decision in the Detroit Public School
22 case.

23 He did not undue actions taken by the
24 emergency manager under Act 4 because those
25 actions were lawfully undertaken. And the mere

1 fact that now the law is suspended right now does
2 not vesicate the actions taken in July or prior
3 to August 8th. The plaintiff is arguing those
4 actions are somehow void ab initio. That is not
5 the law. That is not what the election code
6 says. The plaintiff cites this section in their
7 complaint. It's right in -- they refer to it in
8 the supreme court decision. It's in paragraph
9 16. This is the reference to the stand up for
10 democracy. The supreme court in its decision
11 refers to the section with the election code;
12 168.477 section 2. Therefore, we submit the city
13 employment terms are valid. They do survive.
14 They would be the terms that would be the
15 conditions of employment that any arbitrator
16 would look at.

17 Act 312, the argument is this was
18 addressed, presented before the court of claims.
19 And the court of claims made it very clear that
20 Act 312 doesn't have special exalted status after
21 PA4. PA4 made it clear that there is no duty to
22 bargain. If there's no duty to bargain, there's
23 no right for the employee to sit down with the
24 employer and negotiate a collective bargaining
25 agreement. If there's no right to a collective

1 bargaining agreement, there's no right to have an
2 arbitrator to come in and impose a collective
3 bargaining agreement. That's what Judge
4 Manderfield recognized and made it very clear in
5 her opinion. In fact, it was the response to
6 repeated questions from counsel. He wanted her
7 to add to her ruling. She was just going to deny
8 the restraining order, and he pressed her for
9 more. She said I'm going to rule. I'm making a
10 finding that the city can impose terms and
11 conditions of employment. And within a couple of
12 weeks of that decision, the city did so. Those
13 were lawful acts. And those were the baselines
14 that must guide any arbitrator going forward.

15 Your Honor, as to the balance of the
16 equities, we urge the Court to follow what the
17 court of claims decided. That it is a public
18 interest. We have the state's major city. This
19 issue affects the entire state not just Detroit.
20 It's so important the city is still running.
21 They're still in a deficit position. They're in
22 a deficit position even with these cost savings
23 that we're talking about that were imposed in
24 July. Those are part of the fiscal year budget
25 for 2013. That budget assumes these cost savings

1 will be realized. If that is disturbed, the
2 situation is even more vicarious than it is right
3 now.

4 So the public interest, both for the
5 citizens of Detroit and the state require that
6 this injunction be denied categorically because
7 the plaintiff cannot show success on the merit.
8 They simply can't based on the election code.
9 And they cannot show the interest tilt in favor
10 of the plaintiff. We urge the Court to deny it
11 by the request. Thank you.

12 THE COURT: Counsel.

13 MR. MURPHY: Good morning, your
14 Honor, Michael Murphy appearing on behalf of the
15 attorney general.

16 As a practical matter, I think the
17 whole case is governed by MCR 2.116(C)(6). We
18 have a case. It's pending. It's sitting in the
19 court of claims. What no one is also mentioning
20 is plaintiff filed an emergency appeal from that
21 decision, which the court of appeals declined to
22 hear. That case is still open, active.

23 THE COURT: There's a stay. At least
24 a request for a stay.

25 MR. MURPHY: No. There is a request

1 by the plaintiff to stay the action which is up
2 in September. And they want to stay the entire
3 action pending the referendum. So in the interim
4 PA4 was suspended, and then we had this case
5 filed which the only difference between the two
6 is the suspension of PA4 by referendum. That
7 could have easily been brought in an amendment in
8 that case because it's still open. She hasn't
9 issued a final ruling. And then we'd go back and
10 argue that due to change in circumstances or the
11 change in the law, require the Court to give the
12 relief plaintiff is asking you to give them
13 today. I believe this is just a duplication of
14 that case.

15 The third thing is that I agree with
16 counsel's representation that PA4, even though
17 suspended any acts done under it are not void.
18 They're valid when they were passed. There's no
19 retroactivity to the suspension. Therefore,
20 anything that was implemented while PA4 was in
21 effect, as Judge Murphy has indicated the same in
22 his opinion I'd like to point out because what we
23 hear a lot and I heard it in a lot of these cases
24 is democracy and the will of the people.

25 I don't dispute that we operate under

1 democracy and the will of the people, but we also
2 act. And we have a republican form of
3 government, a representative form of government.
4 And to say the people have willed PA4 out of
5 existence is not accurate. What we had is a
6 minority has suspended the will of the majority,
7 as expressed by the legislature, to suspend PA4.
8 We're in the middle of no man's land, limbo land
9 right now until the election in November when the
10 actual majority, when the will of the people will
11 be expressed. If has not been expressed through
12 the petition and the referendum.

13 I believe because that, and, in fact,
14 this is September 1st this weekend. We have
15 September, October and the election after that.
16 So we have two months or less until the election
17 when we know whether PA4 will be resurrected, so
18 to speak; that since the plaintiff has already
19 asked for a stay of everything in the court of
20 claims until that process is completed, this
21 Court should also stay everything until that
22 process is completed. Why turn everything over
23 and right now and then in two months we go back
24 to PA4, and then we're back in here with all the
25 machinations of what would happen there.

1 I think it's best that this Court let
2 the CET stand as it should because it was valid
3 under PA4. That's the status quo. Maintain that
4 status quo until the election. And then we'll
5 deal with the constitutionality of PA4 should the
6 voters approve it. I think the biggest thing
7 here, and I've looked at all of this because I
8 had to deal with ment DPOA in the court of
9 claims. All the claims are similar. All the
10 harms claimed by the DPOA are the same today as
11 they were in the court of claims.

12 I personally sympathize with their
13 position. I know to a certain extent what
14 they're going through. I had wage freeze,
15 furlough days, cut pay. It's a sign of the time.
16 We're in trouble times. Not just the city of
17 Detroit, but the city of Flint, city of Inkster,
18 Detroit Public Schools, Muskegon Public Schools,
19 Highland Park Public Schools. Allen Park is now
20 on the verge of financial abyss. Your Honor s
21 probably aware they wanted the eliminate most of
22 the fire department in Allen Park.

23 This isn't a problem that's unique to
24 the city of Detroit although I will say it's
25 unique in the sense the city of Detroit is the

1 state of Michigan to a great extent. Without it
2 if you go out of state, they know Detroit. They
3 don't know Allen Park. They don't know Lansing
4 to a certain extent. You mention Detroit and
5 they know where you're coming from. The
6 viability of the city to the state is critical.
7 I think the public interest would be very, very
8 much annihilated if we enter an injunction that
9 would give the DPOA what it wants and end up in
10 the long run destroying the city. We're not
11 dealing with just DPOA. We're dealing with 40
12 some unions in the city all Detroit all facing
13 the same terms and conditions. Who's going to
14 flip the coin and say DPOA is more important than
15 the firefighter. Or DPOA is more important the
16 people who pick up the garbage or drive the bus?
17 They are, because you can't do those functions
18 without them. But at the same time this is a
19 cohesive unit. This is a city that provide more
20 than one service, more than one thing for public
21 safety. If you don't pick up the garbage, you
22 have a health problem; that's public safety. But
23 you have --
24 (Outbursts from unidentified speakers
25 in the courtroom.)

1 THE COURT: I'm going to clear this
2 courtroom if that keeps up. You certainly have a
3 right to be here, but you do not have a right to
4 be disruptive. Continue, counsel.

5 MR. MURPHY: I think the public
6 interest is best served by the denial of the
7 injunction because the city of Detroit must
8 survive. And it won't survive if we have to go
9 back to the way things were. We have to remember
10 that the CBA expired the end of June. There was
11 no contract in place when the CET was
12 implemented. That is the status quo that we're
13 operating under now. The public would be
14 disserved by entering this injunction. I think
15 that's a critical factor for the Court to look
16 at.

17 THE COURT: Counsel, briefly.

18 MR. IORIO: Thank you.

19 THE COURT: I think you need to
20 answer his question.

21 MR. IORIO: And I will when --

22 THE COURT: No, the question is why
23 shouldn't all of this be stayed until after the
24 election in November?

25 MR. IORIO: Because of the

1 irreparable harm. Act 312 says it should not --

2 THE COURT: You couldn't get to an
3 Act 312 before November.

4 MR. IORIO: We're there. The
5 arbitrator has been appointed. We're willing to
6 accelerate. Act 312 doesn't say we have to get
7 there. It simply says we have to invoke it.

8 I'd like to address the claim. The
9 city whether it be intervenor city or Bing or
10 whomever, they all make the argument the
11 viability of the city depends on this action. We
12 agree. The city is not going to be viable if it
13 doesn't have a police department. Public safety
14 begins and end with police, and that's these
15 officers in this courtroom, these officers who
16 are overwhelmed, overwork and out gunned. And to
17 talk about irreparable harm, while we can
18 commensurate with Mr. Jarvis, he doesn't have the
19 protection of Act 312. He doesn't put his life
20 on the line like officers do.

21 To answer Mr. Murphy's question who's
22 going to say who's more important that the other?
23 The legislature has already made that
24 determination. They decided police officers and
25 firefighters get preferential treatment. They

1 said they get Act 312 protection and that the
2 city cannot change their status quo during the
3 pendency of Act 312 regardless of whether there's
4 any kind of ability to pay. Act 312 is designed
5 to answer the inability to pay argument.

6 Arbitrator George Romel is an empowered and
7 experienced arbitrator who has the authority to
8 be able to resolve that question, so that the
9 DPOA can test and examine the voracity of the
10 city's position, which quite frankly we believe
11 in a \$1.2 billion budget the fact that the city
12 hasn't properly prioritized and allocated its
13 resource appropriately, that's the issue as it
14 relates to ability to pay. That's the reason
15 Mayor Bing wanted to do away with the law
16 department because we have duplicative services.
17 We wouldn't need to have multi law firms here,
18 outside expenses. Those are the types of wasted
19 dollars that are incurring on the backs of police
20 officers.

21 You talk about the viability of the
22 city, your Honor. We agree; we stand with Mr.
23 Murphy on that. The problem is that the city's
24 structural problem which exists and it's been
25 ongoing for 15 or 20 years, it's not police

1 officers wages, terms and condition of
2 employment. The city has already succeeded in
3 compressing their compensation to the bottom of
4 the barrel. They've conceded. With that success
5 comes consequences. And the consequences that
6 the city is reeking is a deteriorating police
7 department. Officers are fleeing the door. The
8 city is telling them you better leave because you
9 won't be able to provide, and we don't care if
10 you can't provide for your family. That's been
11 the city's M.O., whether it be this
12 administration or prior administrations for the
13 past 20 years. We've experienced the result.
14 Detroit has experienced the result of that page
15 from that book which is crime continues to
16 explode. If prosperous people leave a once
17 vibrant city of near two million is now down to
18 700,000. Why is that? Because people are
19 afraid, and they're not going to live where they
20 believe the police department cannot protect and
21 serve. And when they leave, they take their tax
22 dollars with them.

23 To think to continue the follow the
24 same tried and unsuccessful policy and double
25 down on it is going to produce different result,

1 that it's going to stop the homicide for which
2 there's 240 as of today. It's going stop the
3 carjacking, stop the violence and lead people
4 back into the city? It's the very definition of
5 insanity. So the DPOA submits that this Court
6 has the ability and it should exercise its
7 authority to grant the injunctive relief to
8 uphold public safety and insure citizens are
9 protected. If that were to occur, exactly what
10 happened less a year ago when the parties sat
11 down and negotiated because Judge Kustis issued
12 an injunction. And it forced the city to the
13 bargaining table which resulted in nearly \$100
14 million in savings. The same thing would occur
15 in this situation.

16 The DPOA and its police officers are
17 entitled to their statutory rights. We'd simply
18 ask they be enforced as written. Thank you.

19 THE COURT: Your right, counsel,
20 sometimes decisions are very difficult. This is
21 a very difficult one for me because I understand
22 that police officers work hard. They put
23 themselves in harms way to protect the public.
24 And they deserve every dollar they earn.
25 However, I'm limited by the law here. The motion

1 presented to me is pursuant to 3.3110 and 2.605.
2 The plaintiff requesting injunctive and
3 declaratory relief compelling defendant to
4 maintain the status quo required by section 13 of
5 Act 12 and MCL 423.243 and to cease and desist
6 from imposing terms and conditions of employment
7 pursuant to Public Act No. 4 of 2011 on or after
8 August 8, 2012 suspension of said act due to
9 Board of State Canvassers certifying the
10 referendum.

11 The standards for such extraordinary
12 relief, and it is extraordinary relief are: The
13 likelihood the party seeking the injunction will
14 prevail on the merits; The danger that the party
15 seeking the injunction will suffer irreparable
16 harm if the injunction is not issued; the risk
17 that the part seeking the injunction would be
18 harmed more by the absence of an injunction than
19 the opposing party would be by granting of the
20 relief; and fourth, the harm to the public
21 interest if the injunction is issued.

22 A party requesting such extraordinary
23 relieve must prevail on all four of these
24 factors. Here, I've decided the injunction must
25 be denied based on two basis. First of all, the

1 harm to the public interest if an injunction is
2 issued. Here, given the city --

3 The first is harm to the public
4 interest if the injunction is issued. Here,
5 given the city's dire financial condition and the
6 consequences of returning to the expired
7 collective bargaining agreement threatens the
8 city's overall financial stability.

9 If the DPOA members are not subject
10 to the cuts, then those cuts would have to be
11 made to other public safety operations and other
12 critical service areas endangering the city and
13 the public as a whole. But the stronger reason
14 to me is that DPOA cannot prevail on the merits
15 of their claim. At issue here are actions taken
16 under Public Act 4 Section 14a subsection 10 and
17 section 15a of PERA. Essentially these laws
18 state that when an employer enters into a PA4
19 consent agreement, there's no duty to bargain
20 once existing union contracts expire. Once
21 existing contract expire the employer has a
22 legally unrestricted right to make changes in
23 wages, hours and terms and conditions of
24 employment.

25 Here, between the city and the

1 plaintiff the CBA has expired as was terminated
2 on June 30th, 2012. On July 18th, 2012, the CET
3 was imposed on plaintiff, and other city
4 employees have been subject to same kinds of
5 changes in employment.

6 Plaintiff's theory that anything done
7 under Public Act 4 that it's necessarily void now
8 that it has suspended is not legally supportable.
9 Article 2 section 9 of our Michigan Constitution
10 provides no law as to which the power of
11 referendum properly has been invoked shall be
12 effective thereafter unless approved by the
13 majority of the electorates voting thereupon at
14 the next general election. This same article is
15 codified in MCL 168.477 subsection 2 which
16 states, a law that is the subject of a referendum
17 continues to be effective until the referendum is
18 properly invoked which occurs when the State
19 Board of Canvassers makes its official
20 declaration of the sufficiency of the referendum
21 petitions. Thus, the actions taken under PA4
22 prior to the suspension are valid and are the
23 status quo as of August 8th, 2012.

24 I believe that my colleague, Judge
25 Murphy, and my colleague in Lansing have reached

1 the same result. To change the status quo at
2 this point would be catastrophic to the city as
3 well as to the union.

4 Your motion for declaratory relief
5 and injunction is denied, counsel.

6 MR. SERYAK: Thank you, your Honor.
7 Is your Honor dissolving the temporary
8 restraining order?

9 THE COURT: Yes.

10 MR. JARVIS: Is the Court also
11 dismissing the complaint, Judge?

12 THE COURT: Yes. So you have a final
13 order that you can appeal at least from this
14 Court.

15 MR. IORIO: Thank you.

16 (Whereupon proceedings concluded.)

17 - - -

18

19

20

21

22

23

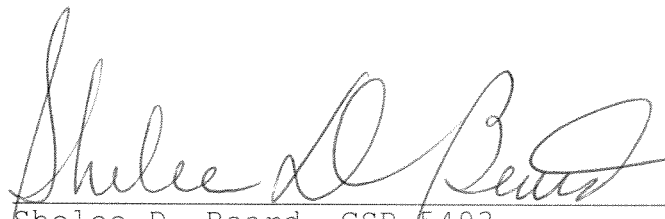
24

25

1 STATE OF MICHIGAN)
2) SS
3 COUNTY OF WAYNE)
4
5

6 R E P O R T E R ' S C E R T I F I C A T E
7

8 I, Shelee Beard, CSR-5493, do hereby
9 certify that I have recorded the proceedings had and
10 testimony taken in the above-entitled matter at the
11 time and place hereinbefore set forth and that the
12 foregoing is a full, true and correct transcript of
13 proceedings had in the above-entitled matter; and I do
14 further certify that the foregoing transcript has been
15 prepared by me or under my direction.

16
17
18
19 
20 Shelee D. Beard, CSR-5493
21 1107 Coleman A. Young Municipal Center
22 Detroit, MI 48226
23 (313) 224-5225
24
25

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

DETROIT POLICE OFFICERS ASSOCIATION,

Plaintiff,

Case No.: 12-010859-CL

v.

Hon. Kathleen MacDonald

CITY OF DETROIT, a Municipal Corporation,

12-010859-CL

Defendant

FILED IN MY OFFICE
WAYNE COUNTY CLERK
9/19/2012 3:44:23 PM
CATHY M. GARRETT
K. Davis

MAYOR DAVID BING,

Proposed Intervenor-Defendant

ATTORNEY GENERAL BILL SCHUETTE
and STATE TREASURER ANDY DILLON

Proposed Intervenor-Defendants

Donato Iorio
Fillipe S. Iorio
Kalniz, Iorio & Feldstein, Co. L.P.A.
4981 Cascade Rd., SE
Grand Rapids, MI 49546
(616) 940-1911
Attorneys for Plaintiff

Andrew R. Jarvis (P59191)
City of Detroit Law Department
660 Woodward Avenue, Suite 1650
Detroit, MI 48226
Phone: 313 237 5038
Attorneys for City of Detroit

Michael F. Murphy (P-29213)
Attorney for Defendants Attorney General Bill
Schuette and Treasurer Andy Dillon
Department of Attorney General
State Operations Division
P.O. Box 30754
Lansing, MI 48909
(517) 373-1162

John Willems (P-39318)
Michael McGee (P-36541)
Miller, Canfield, Paddock And Stone, P.L.C.
Attorneys for Defendant Mayor David Bing
150 West Jefferson, Suite 2500
Detroit, Michigan 48226
(313) 963-6420
willems@millercanfield.com
mcgee@millercanfield.com

**ORDER DENYING PLAINTIFF'S MOTION FOR A STAY OF
PROCEEDINGS/INJUNCTION PENDING APPEAL**

At a session of said Court held in the City of Detroit,
County of Wayne and State of Michigan
ON: September 19, 2012

PRESENT: HON. Kathleen Macdonald
CIRCUIT COURT JUDGE

This matter having come for hearing before this Court on September 18, 2012 on Plaintiff Detroit Police Officer's "Motion for a Stay of Proceedings/Injunction Pending Appeal" pursuant to MCR 2.614(C), and the Court having read and considered the pleadings, briefs, and affidavits filed by the parties, and the Court having heard oral argument from counsel for Plaintiff, the City of Detroit, Mayor Bing, and the Attorney General and State Treasurer in open Court; and the Court being otherwise fully advised in the premises;

IT IS HEREBY ORDERED AND ADJUDGED that for the reasons stated by the Court on the record at the September 18, 2012 hearing, Plaintiff's Motion for a Stay of Proceedings/Injunction Pending Appeal pursuant to MCR 2.614(C) shall be and hereby is **DENIED**.

PURSUANT TO MCR 2.602(A)(3), THIS IS A FINAL ORDER THAT RESOLVES THE LAST PENDING CLAIM AND CLOSES THE CASE.

/s/ Kathleen Macdonald

CIRCUIT COURT JUDGE

Stipulated as to form only:

Donato Iorio
Fillipe S. Iorio
Kalmz, Iorio & Feldstein, Co. L.P.A.
Attorneys for Plaintiff

Michael F. Murphy (P-29213)
Attorney for Defendants Attorney General Bill
Schuette and Treasurer Andy Dillon
Department of Attorney General
State Operations Division

Andrew R. Jarvis (P-39191)
City of Detroit Law Department
Attorneys for City of Detroit

John Wilkens (P-39318)
Michael McGee (P-36541)
Miller, Canfield, Paddock And Stone, P.L.C.
Attorneys for Proposed Intervenor-Defendant Mayor
David Bing

Court of Appeals, State of Michigan

ORDER

Detroit Police Officers Association v City of Detroit

Docket No. 311317

LC No. 12-000080-MK

William B. Murphy, C.J.
Presiding Judge

David H. Sawyer

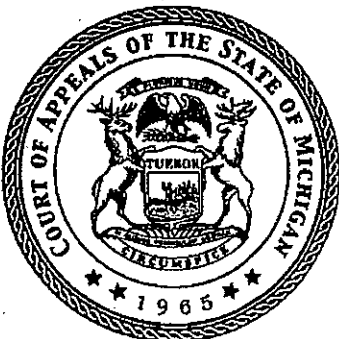
Joel P. Hoekstra
Judges

The motion for immediate consideration of the application for leave to appeal is **GRANTED**.

The Court orders that the application for leave to appeal is **DENIED** for lack of merit in the grounds presented.

The motion for immediate consideration of the motion for stay and/or injunction pending appeal is **GRANTED**.

The motion for stay and/or injunction pending appeal is **DENIED**.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

JUL 25 2012

Date


Chief Clerk

STATE OF MICHIGAN

Honorable Paula J.M. Manderfield
Circuit Judge



THIRTIETH JUDICIAL CIRCUIT
Veterans Memorial Courthouse

October 8, 2012

Dept of Attorney General

OCT 10 2012

State Attorney General
RECEIVED

Mr. Andrew A. Paterson
Paterson Law Office
46350 Grand River Ave., Ste. C
Novi, MI 48374

Ms. Kathleen Cavanaugh
Mr. Joshua O. Booth
Assistant Attorneys General
P.O. Box 30754
Lansing, MI 48909

Mr. John Willems
Mr. Michael J. Hodge
Mr. Michael McGee
Miller, Canfield, Paddock & Stone, PLC
150 W. Jefferson Ave., Ste. 2500
Detroit, MI 48226

Mr. James D. Nosedo
City of Detroit Law Dept.
660 Woodward Ave., Ste. 1650
Detroit, MI 48226

Re: *Citizens United Against Corrupt Government, et al. v City of Detroit Financial Review Team, et al.*
Ingham County Case No.: 12-698-CZ

Dear Counsel:

Enclosed please find an Opinion and Order.

Sincerely,

Jean M Smydra

Jean M. Smydra
Judicial Assistant to Judge Manderfield

Enclosure

STATE OF MICHIGAN
IN THE 30TH CIRCUIT COURT FOR THE COUNTY OF INGHAM
GENERAL TRIAL DIVISION

**CITIZENS UNITED AGAINST
CORRUPT GOVERNMENT and
AFSCME COUNCIL 25,**

Plaintiffs,

v

**CITY OF DETROIT FINANCIAL
REVIEW TEAM, DETROIT CITY
COUNCIL, and ANDY DILLON,**

Defendants,

and

MAYOR DAVE BING,

Intervenor Defendant.

OPINION AND ORDER

Case No.: 12-698-CZ

Hon. Paula J.M. Manderfield

This case arises from a challenge to the validity of the Financial Stability Agreement entered into between the City of Detroit and the State of Michigan under Public Act 4 ("PA 4"). Defendants City of Detroit Financial Review Team ("the Financial Review Team") and Andy Dillon ("Dillon") seek dismissal under MCR 2.116(C)(8). Mayor Dave Bing ("the Mayor") seeks dismissal under MCR 2.116(C)(8) and (C)(10).

For the reasons set forth below the Court grants Defendants' motions.

BACKGROUND

Plaintiff Citizens United Against Corrupt Government (“Citizens”) was previously dismissed for lack of standing. Prior to that dismissal Citizens filed a First Amended Complaint adding AFSCME Council 25 (“AFSCME”). AFSCME is a local trade union. Defendant Dillon is both the State Treasurer and a member of the Financial Review Team. As the State Treasurer, he is the State Financial Authority for purposes of this case.

This case concerns actions taken pursuant to PA 4 (the Local Government and School District Fiscal Accountability Act, also referred to as the Emergency Financial Manager Act).¹ Under the act, Dillon is vested with the authority to conduct a preliminary review of the finances of any local unit of government that he deems necessary.² In December 2011, Dillon undertook a review of the City of Detroit’s finances in order to determine whether or not a financial emergency existed in the City’s finances.

After Dillon’s review of the City’s finances, he reported to the Governor and advised that he found “probable financial stress,” and requested the Governor to appoint a Financial Review Team under PA 4. As required by PA 4, Dillon was appointed as one of the ten members of the Team.³

The Financial Review Team was tasked with examining the City’s finances to determine whether or not a financial emergency existed that would warrant the appointment of an emergency manager or some other less severe remedy. Under PA 4 the Financial Review Team had the authority to negotiate and sign a consent agreement

¹ MCL 141.1501, *et seq.*

² MCL 141.1512(1).

³ MCL 141.1512(4).

with the City's Chief Administrative Officer (the Mayor).⁴ After review, the Financial Review Team was required to issue a report to the Governor reaching one of the following four conclusions:

1. The local government is not in financial stress or is in a condition of mild financial stress;
2. The local government is in a condition of severe financial stress, but a consent agreement containing a plan to resolve the problem has been adopted;
3. The local government is in a condition of severe financial stress, and a consent agreement has not been adopted; or
4. A financial emergency exists and no satisfactory plan exists to resolve the emergency.⁵

The Financial Review Team concluded that the City of Detroit was in severe financial stress and that a consent agreement had not been adopted in its report to the Governor.

Dillon acting in his capacity as the State Financial Authority had the authority to approve and execute a consent agreement negotiated by the Financial Review Team.

Under PA 4, the Detroit City Council had the authority to approve by resolution or disapprove any consent agreement negotiated by the Financial Review Team.

On April 4, 2012, the Financial Review Team convened a public meeting. At that meeting Dillon advised the Team of the various meetings he had held with the City and with City Council staff. Dillon explicitly stated that at those meetings he was not acting in his capacity as a member of the Team, but rather in his capacity as the State Treasurer. Following Dillon's report, the Financial Review Team voted to approve a consent agreement with the City of Detroit (the Financial Stability Agreement, referred to here as

⁴ MCL 141.1513(1)(c).

⁵ MCL 141.1513(4).

the FSA). That same day the City Council voted by resolution to approve the FSA, and Dillon, acting in his capacity as the State Financial Authority, approved and executed the FSA.

The Governor signed the FSA after determining that the City was in severe financial stress and the consent agreement contained a plan to resolve the financial stress under PA 4.

In the First Amended Complaint, four counts are stated:

Count I: The FSA is void because it was not properly negotiated;

Count II: Sections 1.1 and 1.3 of the FSA violate the Michigan Constitution;

Count III: Section 4 of the FSA violates PA 4; and

Count IV: Plaintiff is entitled to costs and attorney's fees.

The Financial Review Team, Dillon, and the Mayor move for summary disposition as to all four counts.

ANAYLSIS

Standard of Review

The standard of review has been accurately stated in the parties' briefs and will not be repeated here.

Discussion

Standing:

The Financial Review Team and Dillon assert that AFSCME lacks standing to bring this action for declaratory relief because an actual controversy must exist, and here there is no such actual controversy. The Court agrees.

The Michigan Supreme Court set forth the general rule regarding standing as follows:

A litigant has standing whenever there is a legal cause of action. Further, whenever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgment. Where a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant has standing. A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant.⁶

Relying on the first sentence of the above, AFSCME directs the Court to MCL 600.2041(3) and MCR 2.201(B)(4)(a). Each of these provides that an action to prevent the illegal expenditure of state funds or to test the constitutionality of a statute related thereto may be brought in the name of a domestic nonprofit corporation organized for civic, protective, or improvement purposes. AFSCME asserts that it is hereby attempting to prevent the illegal expenditure of state funds to implement the FSA, and therefore it has standing.

AFSCME has overlooked or ignored the fact that this action is an action for declaratory judgment. In order to have standing to seek declaratory relief, an “actual controversy” must exist.⁷ An actual controversy exists “when a declaratory judgment is necessary to guide a plaintiff’s future conduct in order to preserve legal rights.”⁸ It does not exist when issues are merely hypothetical.⁹ As the Michigan Court of Appeals has stated:

⁶ *Lansing Schools Education Ass’n v Lansing School District Bd of Educ*, 487 Mich 349, 372; 792 NW2d 686 (2010).

⁷ MCR 2.605(A)(1); *Int’l Union, United Auto, Aerospace, & Agriculture Implement Workers of America v Central Michigan Univ Trustees*, 295 Mich App 486, 494-495; 815 NW2d 132 (2012).

⁸ *Id.*, at 495.

⁹ *Id.*

The essential requirement of an actual controversy under the rule is that the plaintiff pleads and proves facts that demonstrate an adverse interest necessitating the sharpening of the issues raised.

Id.

Here, AFSCME is not a party to the FSA, and therefore has no interest in the manner the FSA was negotiated, whether the FSA violates the Constitution, or whether it violates PA 4. As a result, there is no need for the Court to guide AFSCME's conduct or sharpen any issues for the future. Since there is no "actual controversy," AFSCME lacks standing to bring Counts this case.

The Court notes that AFSCME has argued that it has standing because:

[I]t has been adversely affected differently from the citizens at large considering its members have been adversely affected with the unilaterally [sic] implementation of new work rules and collective bargaining agreements without having the opportunity to bargain in accordance with PERA.¹⁰

However, any injury to AFSCME's right to bargain under PERA is the result of the operation of PA 4 and the FSA, and not the result of the manner in which the FSA was negotiated. Likewise, any such injury to AFSCME also is not the result of certain sections of the FSA being unconstitutional or in violation of PA 4. Thus, there is no factual or legal link between the manner in which the FSA was negotiated, its constitutionality, or its legality in relation to PA 4, and any adverse affect on AFSCME's right to bargain under PERA. Accordingly, this argument is unavailing.

Although this Court does not believe Plaintiff has standing, the Court elects address the remaining arguments.

¹⁰ AFSCME's complaint, Paragraph 36.

Count I – FSA Improperly Negotiated:

Defendants argue that Count I should be dismissed because nothing in PA 4 either requires the Financial Review Team as a whole to negotiate a consent agreement, or bars the Financial Review Team from delegating the power to negotiate a consent agreement to a single member of the Team. The Court agrees.

MCL 141.1513(c) states in relevant part as follows:

The review team shall have full power in its review to perform all of the following functions:

* * *

(c) Negotiate and sign a consent agreement with the chief administrative officer of the local government.

AFSCME asserts that this statute gives the Financial Review Team the exclusive authority to negotiate a consent agreement. AFSCME then notes that Dillon negotiated the terms of the FSA acting in his role as State Treasurer, and therefore asserts that the FSA was improperly negotiated and must be deemed void.

However, such an interpretation is contrary to the terms of the statute itself. The plain language merely grants the Financial Review Team the power to negotiate a consent agreement. It does not restrict that power exclusively to the Financial Review Team as a whole.

Moreover, a review of PA 4 as a whole confirms the Court's interpretation. PA 4 explicitly provides that the State Treasurer, as the State Financial Authority, has the authority to insist that certain terms be included in a consent judgment.¹¹ Nothing in PA

¹¹ MCL 141.1415a.

4 bars or prohibits the State Treasurer from negotiating or participating in the negotiation of a consent judgment, and nothing in the Act bars the Financial Review Team from delegating its authority to negotiate, in part or in whole, to one of its team members.

Likewise, there is nothing in the Michigan Court of Appeals' decision in *Davis v City of Detroit Financial Review Team*,¹² referenced and relied upon by Plaintiff, that says the Financial Review Team has exclusive authority to negotiate the terms of a consent judgment, or that PA 4 bars the Team from delegating its negotiating authority to one of its team members.

Moreover, although Dillon conducted meetings with various City officials and discussed terms of a consent agreement while acting as State Treasurer, ultimately the entire Financial Review Team met at a public meeting and reviewed the consent agreement, provision by provision, and approved or amended the consent agreement before taking a final vote to approve the FSA. Therefore this Court finds that the FSA was negotiated in compliance with PA 4, and Plaintiff has failed to state a claim as to Count I.

Count II – Sections 1.1 and 1.3 of FSA Violate Constitution:

In Count II Plaintiff asserts that the FSA violates Article 9, Section 17 and Article 4, Section 30 of the Michigan Constitution, because the FSA requires the State to pay money out of the treasury for a local purpose without any appropriation for that expenditure having been made.

¹² *Davis v Financial Review Team*, ___ Mich App ___, ___ NW2d ___ (2012)

The Court previously ruled in this case that Citizens had failed to state a claim in Count II, because the obligations agreed to by the State in the FSA were for a State purpose and there was an appropriation passed by a two-thirds vote of the Legislature for these expenditures.¹³ Because AFSCME's arguments are identical, that ruling controls and Count II must be dismissed.

Count III – Sections 4.1 and 4.3 of FSA Violate PA 4:

Defendants assert that Count III must be dismissed because Sections 4.1 and 4.3 do not grant the Mayor any power that was expressly reserved to an emergency manager under PA 4. Again the Court agrees.

Section 4.1:

The Financial Review Team and Dillon note that Section 4.1 of the FSA explicitly provides that the authority granted in that Section in regard to rejecting, modifying, or terminating collective bargaining agreements only exists to the "extent authorized by law."¹⁴ By its very terms the powers granted in Section 4.1 are only granted to the extent that they are allowed by PA 4. The Mayor makes the same argument, and buttresses this argument with an affidavit from the City Labor Relations Director, Lamont Satchel, which states that the Mayor does not interpret his powers under Section 4.1 to include the powers enumerated under MCL 141.1519(1)(k), and has not and will not exercise such power.¹⁵

¹³ Transcript of hearing on MSD, pp 30-32.

¹⁴ FSA, Section 4.1.

¹⁵ Affidavit of Lamont Satchel, attached to the Mayor's brief directly before Exhibit 1, p 3.

Section 4.3:

The Financial Review Team and Dillon note that MCL 141.1519(1)(k) grants emergency managers the exclusive power to reject, modify, or terminate one or more terms and conditions of an **existing** collective bargaining agreement. Only actions relating to **existing** collective bargaining agreements cannot be granted to the mayor pursuant to MCL 141.1514a(9). Section 4.3 of the FSA provides a procedure to follow when a collective bargaining agreement **has expired** and new employment terms must be established. Accordingly, Section 4.3 of the FSA does not grant the Mayor the exclusive powers granted to emergency managers in MCL 141.1519(1)(k), and therefore does not violate MCL 141.1514a(9).

The Mayor notes that while MCL 141.1514a(9) bars the grant to the Mayor of the powers set forth in MCL 141.1519(1)(k), that same statute provides for the grant to the Mayor of any of the other powers prescribed for emergency managers in MCL 141.1519. The Mayor further notes that Section 4.3 explicitly provides that the powers granted therein are granted pursuant to MCL 141.1514a, MCL 141.1519(1)(g) and 141.1519(DD)(i), or other applicable law. Nowhere does Section 4.3 indicate that it includes a grant of the powers set forth in MCL 141.1519(1)(k). Moreover, AFSCME cannot point to any instance where the Mayor rejected, modified, or terminated one or more terms and conditions of an **existing** collective bargaining agreement. The fact that no such action has been taken itself suggests that Section 4.3 does not grant such authority.

The Court's Analysis:

PA 4 allows a consent agreement to include a grant to the chief administrative officer (Mayor Bing) of one or more of the powers prescribed for emergency managers.¹⁶ It also provides that this grant of powers may not include powers prescribed for emergency managers in MCL 141.1519(1)(k) of PA 4.¹⁷ MCL 141.1519(1)(k) grants an emergency manager the power to:

After meeting and conferring with the appropriate bargaining representative and, if in the emergency manager's sole discretion and judgment, a prompt and satisfactory resolution is unlikely to be obtained, reject, modify, or terminate 1 or more terms and conditions of an existing collective bargaining agreement.

Section 4.1 of the FSA provides as follows:

The Mayor shall have the authority to negotiate, renegotiate, execute, amend, modify, reject or terminate collective bargaining agreements to the fullest extent authorized by law and subject to the terms of this Agreement.

Section 4.3 of the FSA provides as follows:

The Labor Relations Division shall negotiate and administer collective bargaining contracts in consultation with the Program Management Director. Upon the prior approval of the Financial Advisory Board following consultation with the Program management Director, the head of the Labor Relations Division shall deliver to the Mayor any proposed collective bargaining agreement which satisfies the requirements of Section 4.2 of this Agreement for consideration and transmittal to the City Council in accordance with Sec. 6-408 of the Charter. The Mayor shall not approve and transmit to the City Council, and the City Council shall not approve of, any collective bargaining agreement which does not satisfy the requirements of Section 4.2 of this Agreement. If the City Council fails to approve a collective bargaining agreement as proposed by the Mayor and approved by the Financial Advisory Board within 30 days after the submittal of the proposed collective bargaining agreement, then the Program management Director may approve the collective bargaining agreement in the place and stead of the City Council. The powers and actions of the Program Management Director authorized by this Section 4.3 shall be granted pursuant to MCL 141.1514a, MCL 141.1519(1)(g)

¹⁶ MCL 141.1514a(9).

¹⁷ *Id.*

and 141.1519(DD)(i), or other applicable law, to the extent necessary to implement this Section 4.3, but only to the limited extent and limited time necessary to implement this Section 4.3

AFSCME asserts that the powers granted to the Mayor in these sections falls within those powers exclusively granted to the emergency manager in MCL 141.1519(1)(k) and barred to the chief administrative officer of the local government in MCL 141.1514a(9), and therefore asserts that Section 4.1 and 4.3 violate PA 4.

The Court finds Defendants' arguments to be the more persuasive, and for those reasons finds that Sections 4.1 and 4.3 of the FSA do not violate the terms of PA 4. Therefore Plaintiff has failed to state a claim in Count III.. To the extent that this Court previously ruled Sections 4.1 and 4.3 of the FSA invalid, the Court hereby reconsiders and reverses that ruling.

Count IV – Costs and Attorney's Fees:

Based on the above rulings, Count IV for costs and attorney's fees is moot.

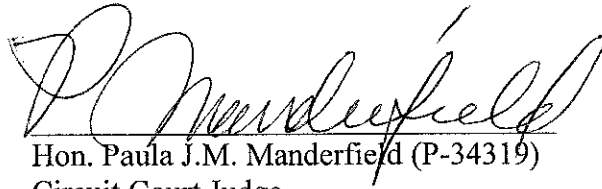
Finally, the Court notes that AFSCME has argued that because PA 4 has been suspended, the FSA also should be suspended. This argument was raised for the first time in AFSCME's response brief, and therefore is not properly before this Court and will not be considered.

ORDER

IT IS HEREBY ORDERED that Defendants' Motions for Summary Disposition are **GRANTED** pursuant to MCR 2.116(C)(8) as to all counts.

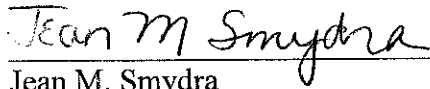
This order resolves the last pending claim and closes this case.

8th
October 10, 2012


Hon. Paula J.M. Manderfield (P-34319)
Circuit Court Judge

PROOF OF SERVICE

I hereby certify that I served a copy of the Opinion and Order upon the attorneys of record by placing said document in an envelope addressed to each attorney and placing same for mailing with the United States Mail at Lansing, Michigan, on October 8, 2012.



Jean M. Smydra

Judicial Assistant to Judge Manderfield

cc: Andrew A. Paterson
Paterson Law Office
46350 Grand River Ave., Ste. C
Novi, MI 48374

Kathleen Cavanaugh
Joshua O. Booth
Assistant Attorneys General
P.O. Box 30754
Lansing, MI 48909

John Willems
Michael J. Hodge
Michael McGee
Miller, Canfield, Paddock & Stone, PLC
150 W. Jefferson Ave., Ste. 2500
Detroit, MI 48226

James D. Nosedo
City of Detroit Law Dept.
660 Woodward Ave., Ste. 1650
Detroit, MI 48226

STATE OF MICHIGAN
COURT OF CLAIMS

DETROIT POLICE OFFICERS
ASSOCIATION,

Plaintiff,

v

No. 12-80-MK

HON. PAULA J.M.
MANDERFIELD

CITY OF DETROIT, a Municipal Corporation;
DAVID BING, Mayor of City of Detroit; KIRK
J. LEWIS, Deputy Mayor (Acting as Mayor) of
City of Detroit; CITY COUNCIL, City of
Detroit; ANDY DILLON, State Treasurer;
THE FINANCIAL REVIEW TEAM FOR THE
CITY OF DETROIT; STATE OF MICHIGAN;
RICK SNYDER, Governor; RALPH L.
GODBEE, Chief of Police, City of Detroit;

Defendants.

ORDER DENYING
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION

Donato Iorio (P57423)
Attorney for Plaintiffs
Kalniz, Iorio & Feldstein, Co., L.P.A.
P.O. Box 352170, 5550 W. Central Ave.
Toledo, OH 43635-2170
419-537-4825 Fax: 419-535-7732

Fillipe S. Iorio (P58741)
Attorney for Plaintiffs
Kalniz, Iorio & Feldstein
4981 Cascade Rd. S.E.
Grand Rapids, MI 49546
616-940-1911 Fax: 616-940-1942

Michael F. Murphy (P29213)
Attorney for Defendants State of MI,
Dillon, Snyder, Review Team
Michigan Department of Attorney General
State Operations Division
P.O. Box 30754
Lansing, MI 48909
517-373-1162 Fax: 517-373-2060

Margaret A. Nelson (P30342)
Attorney for Defendants State of MI,
Dillon, Snyder, Review Team
MI Department of Attorney General
Public Employment, Elections & Tort
P.O. Box 30736
Lansing MI 48909
517-373-6434

John H. Willems (P31861)
Miller Canfield Paddock & Stone PLC
Attorney for Mayor Bing, Deputy Mayor
Lewis, and Chief of Police Godbee
150 W Jefferson Ave., Ste. 2500
Detroit, MI 48226
(313) 963-6420 Fax: (313) 496-8453

Andrew R. Jarvis (P59191)
City of Detroit Law Department
Attorney for City of Detroit and City
Council
660 Woodward Ave Ste 1650
Detroit, MI 48226
(313) 237-5038 Fax: (313) 224-5505


At a session of said Court held in the
Court of Claims, City of Lansing,
County of Ingham, State of Michigan,

on 7/9/12

PRESENT: HON. _____

This matter having come before the Court on Plaintiff's Motion for a
Preliminary Injunction; the Court having considered the pleadings, briefs, and
argument of counsel; and the Court being otherwise fully advised in the premises;

IT IS HEREBY ORDERED that Plaintiff's Motion for a Preliminary
Injunction is DENIED as to the ^{ALL}~~State~~ Defendants for the reasons stated from the
bench on July 9, 2012 and incorporated herein.


COURT OF CLAIMS JUDGE _{P34317}

2012-0016050-A\Detroit Police Officers Assoc v City of Detroit\ Order Denying PI

INGHAM COUNTY CIRCUIT COURT
PO BOX 40771
LANSING, MI 48901

CLERKS' NOTICE
FILE NUMBER: 12-000698-CZ-C30
JUDGE PAULA J. M. MANDERFIELD

DAVE BING c/o MEGAN P. NORRIS
150 W JEFFERSON #2500
DETROIT, MI 48226

Official Circuit Court Notice

October 9, 2012

CITIZENS UNITED AGAINST CORRUPT GOVERNMENT VS CITY OF DETROIT FINANCIAL REVIEW TEAM et al
NOTICE IS HEREBY GIVEN PURSUANT TO COURT RULE OF THE FILING OF THE FOLLOWING IN THIS CASE

OPINION / ORDER THAT DFS' MOTIONS FOR SUMMARY DISPOSITION ARE GRANTED AS TO ALL COUNTS - THIS ORDER RESOLVES THE LAST PENDING CLAIM AND CLOSES THE CASE (SIGNED BY JUDGE MANDERFIELD ON 10/8/12)

K KIRK,
DEPUTY CLERK OF THE COURT

INGHAM COUNTY CIRCUIT COURT
CLERK OF THE COURT
MIKE BRYANTON

2012 OCT - 9 P 4: 08

FILED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF MICHIGAN
COURT OF CLAIMS

DETROIT POLICE OFFICERS
ASSOCIATION,

Plaintiff,

v

Case No. 12-80-MK
Hon. Paula J.M. Manderfield

CITY OF DETROIT, et al.,

Defendants.

MOTION FOR PRELIMINARY INJUNCTION
MOTION FOR STAY

BEFORE THE HON. PAULA J.M. MANDERFIELD, CIRCUIT JUDGE

Ingham County, Michigan - Monday, July 9, 2012

APPEARANCES:

For the Plaintiff: FILLIPE S. IORIO (P58741)
 Kalniz, Iorio & Feldstein
 4981 Cascade Rd., SE
 Grand Rapids, MI 49546

 DONATO IORIO (P57423)
 Kalniz, Iorio & Feldstein, Co., LPA
 P.O. Box 352170
 Toledo, OH 43635-2170

For Defendants State of MI, Dillon, Snyder, Financial
Review Team: MICHAEL F. MURPHY (P29213)
 Assistant Attorney General
 State Operations Division
 P.O. Box 30754
 Lansing, MI 48909

For Defendant City of Detroit:
 ANDREW R. JARVIS (P59191)
 City of Detroit Law Department
 660 Woodward Avenue
 Suite 1650
 Detroit, MI 48226

1 For Defendants Bing, Lewis, and Godbee:
2 MICHAEL J. HODGE (P25146)
3 JOHN WILLEMS (P39318)
4 Miller, Canfield, Paddock & Stone, PLC
5 One Michigan Avenue
6 Suite 900
7 Lansing, MI 48933-1609

8 REPORTED BY: Melinda I. Dexter, RPR, CSR-4629
9 Official Court Reporter
10 313 W. Kalamazoo
11 Post Office Box 40771
12 Lansing, MI 48901-7971

13
14
15
16
17
18
19
20
21
22
23
24
25

1	T A B L E O F C O N T E N T S
2	
3	
4	
5	<u>WITNESSES:</u>
6	None
7	
8	
9	
10	
11	<u>EXHIBITS:</u>
12	None
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

1 Ingham County, Michigan
2 Monday, July 9 2012 - 2:27 p.m.
3 THE COURT: Please be seated. Okay. This is
4 the Detroit Police Officers Association versus the City
5 of Detroit, et al., Docket 12-80-MK. This is the time
6 set for a hearing on the TRO.
7 And who's here on behalf of the Plaintiff?
8 MR. FILLIPE IORIO: Your Honor, Fill Iorio on
9 behalf of the DPOA.
10 THE COURT: Okay.
11 MR. DONATO IORIO: Your Honor, Donato Iorio on
12 behalf of the DPOA.
13 THE COURT: Okay. And who's here on behalf of
14 the Defendants?
15 MR. JARVIS: Good afternoon, your Honor.
16 Andrew Jarvis, assistant corporation counsel with the
17 City of Detroit, for the City of Detroit.
18 THE COURT: Okay.
19 MR. WILLEMS: Your Honor, John Willems on
20 behalf of Mayor David Bing, Deputy Mayor Kirk Lewis, and
21 Chief of Police Ralph Godbee.
22 THE COURT: Okay. And you're Mr. Givens? Are
23 you Mr. Givens?
24 MR. WILLEMS: Mr. Givens is not here.
25 THE COURT: Okay. And what is your name again?

4

1 MR. WILLEMS: John Willems, W-i-l-l-e-m-s.
2 THE COURT: Yes, and you're here for the Mayor?
3 MR. WILLEMS: Mayor, Chief of Police, and
4 Deputy Police.
5 THE COURT: Okay.
6 MR. HODGE: Michael Hodge, your Honor, with
7 Mr. Willems.
8 THE COURT: Okay.
9 MR. MURPHY: Michael Murphy, your Honor, on
10 behalf of the Governor, State Treasurer, and the Detroit
11 Financial Review Team.
12 THE COURT: Okay.
13 And, Mr. Iorio, go ahead, please.
14 MR. FILLIPE IORIO: Thank you, your Honor.
15 THE COURT: Would you mind coming up to the
16 podium, please.
17 MR. FILLIPE IORIO: Good afternoon. Fill Iorio
18 appearing on behalf of the Plaintiff, Detroit Police
19 Officers Association, which I'll refer to as the DPOA.
20 The DPOA represents approximately 2,130 police officers
21 who serve the residents of the city of Detroit and are
22 charged with providing public safety in perhaps the most
23 dangerous, violent city in the United States.
24 The DPOA and the City are parties to a labor
25 agreement that expired on June 30, 2012. This labor

13-53846-11 Doc 11102-7 Filed 04/21/16 Entered 04/21/16 12:24:19 Page 96 of 120

5

1 agreement contains provisions relating to wages, fringe
2 benefits, and other terms and conditions of work.
3 In anticipation of the expiration of this
4 agreement, the DPOA representatives and the City met in
5 the winter of 2011 and 2012 and agreed to a tentative
6 agreement whereby the DPOA agreed to additional economic
7 concessions. However, the City failed to put that
8 tentative agreement into place, compelling the DPOA to
9 initiate what are called Act 312 proceedings. Those
10 proceedings were initiated in April of 2012.
11 THE COURT: So that was before this -- the
12 current collective bargaining agreement expired.
13 MR. FILLIPE IORIO: Correct.
14 THE COURT: There were concessions agreed to
15 between the parties back in the winter of --
16 MR. FILLIPE IORIO: February of 2012.
17 THE COURT: Okay.
18 MR. FILLIPE IORIO: A tentative agreement had
19 been reached, but no action was taken on that. The DPOA
20 then filed for Act 312 arbitration starting the process
21 in April of 2012. The City has stated that it is not
22 subject to Act 312, will not enter into a successor
23 agreement, and has refused to participate in state-
24 mandated mediation.
25 The Defendants in this case include the State

6

1 and the City, and the DPOA presents that they have
2 precipitated a labor crisis by entering into a financial
3 stability agreement, which I'll refer to as the FSA. The
4 FSA is premised upon 2011 PA 4, commonly known as the
5 emergency manager law. The State and the City are using
6 this FSA as an excuse to refuse to engage in state-
7 mandated mediation, to refuse to be subject to Act 312,
8 and to refuse to enter into a successor agreement.
9 Instead, the Defendants have said they've
10 terminated the agreement, they will not agree to a
11 successor agreement, and they will decide which, if any,
12 terms and provisions in the collective bargaining
13 agreement they will follow going forward. The Defendants
14 have put the parties at the very precipice of the very
15 type of labor strife that Act 312 was designed to avoid.
16 The Plaintiffs have filed a six-count complaint
17 against Defendants in order to preserve their right to
18 Act 312 binding arbitration, to prevent the wholesale
19 dismantling of the DPOA collective bargaining agreement,
20 and their rights to collective bargaining.
21 Your Honor, I think it's important to note what
22 the Plaintiff is not asking this Court to do. The
23 Plaintiff is not asking the Court to invalidate the
24 entire FSA. The Plaintiff is not asking this Court to
25 overrule the entirety of PA 4. Instead, Plaintiff is

7

<p>1 requesting that this Court declare through declaratory 2 judgment and to also issue an injunction that makes it 3 very clear that the Defendants cannot prevent, obstruct, 4 or otherwise deny the application of Act 312 and/or deny 5 the Plaintiff rights to a collective bargaining 6 agreement.</p> <p>7 The complaint can be summarized as follows: 8 Counts I, II, and IV are declaratory judgment actions 9 against the State and City, essentially asking that the 10 Court declare that the City is subject to Act 312, 11 notwithstanding the Defendants' alleged obligations under 12 the FSA and PA 4.</p> <p>13 Count III is a count seeking injunctive relief 14 seeking to enjoin any changes to existing wages, hours, 15 and other conditions of employment during the pendency of 16 Act 312 proceedings.</p> <p>17 Counts V and VI are counts just against the 18 State alleging tortious interference with contract and 19 tortious interference with a business relationship.</p> <p>20 Your Honor, we have presented not only a 21 verified complaint and an affidavit, we've also filed 22 today a supplemental affidavit. There is the affidavit 23 of Joseph Duncan, who is the president of the DPOA, the 24 supplemental affidavit of Joseph Duncan; and the exhibits 25 attached thereto. I'd like to at least go through some</p> <p style="text-align: center;">8</p>	<p>1 initiate Act 312 proceedings. And I point your 2 attention, your Honor, to Exhibit C, to Duncan's 3 affidavit, to the initial affidavit, which is the filing 4 that starts the Act 312 process, and that was April 27, 5 2012.</p> <p>6 The actions of the Defendants that have 7 precipitated this labor crisis I don't believe are in 8 dispute. First, the Defendants, the State Defendants, 9 namely through the Office of the Governor and the State 10 Treasurer, initiated proceedings under the Emergency 11 Manager Act by undertaking a review of the city of 12 Detroit's financial condition. After initiating the 13 proceedings, the State negotiated and implemented what is 14 called the financial stability agreement in April of 15 2012. We've attached that as Exhibit A to the first 16 Duncan affidavit.</p> <p>17 Second, the State is directing that the City 18 violate the City's legal obligations to engage in 19 mandated mediation, binding arbitration under Act 312, 20 and to bargain in good faith under PERA. They are doing 21 this through the FSA, which is a contract between the 22 State and the City. The FSA purports to address 23 collective bargaining agreements, and perhaps the section 24 that is most relevant to this dispute, and I'm pointing 25 to section 4, which is found on page 32 and in which</p> <p style="text-align: center;">10</p>
<p>1 of the facts to frame the issues in this case.</p> <p>2 The DPOA and the City have engaged in 3 collective bargaining going back decades. The parties' 4 most recent contract is attached as Exhibit B to 5 Joseph Duncan's first affidavit. In fact, we've attached 6 the two most recent contracts. The first is the 7 2004-2009 agreement, and then at the end you can see that 8 that agreement was modified and extended through June 30, 9 2012.</p> <p>10 It is undisputed, and you can see in 11 Mr. Duncan's affidavits, that in the most recent 12 collective bargaining agreement that just expired, the 13 DPOA agreed to major economic concessions, no wage 14 increases since 2008, reduction in pension benefits, 15 including elimination of the annual pension escalator, 16 reducing the pension multiplier from 2.5 to 2.1, agreeing 17 to defined distribution plan for new hires, changes in 18 working conditions; all concessions that the DPOA agreed 19 to through the last Act 312 process.</p> <p>20 As I've mentioned and is noted in Duncan's 21 affidavit, February of 2012, in anticipation of the 22 current collective agreement expiring, the DPOA agreed to 23 further economic concessions that are spelled out in 24 Duncan's affidavit. However, the City did not act on 25 that tentative agreement which compelled the DPOA to</p> <p style="text-align: center;">9</p>	<p>1 continues through page 33, the FSA purports to grant to 2 various Defendants, including the Mayor and the State 3 Treasurer, expansive powers. These powers include the 4 following:</p> <p>5 Page 32 of the FSA, which is Exhibit A, the 6 authority of the Mayor to modify, reject, or terminate 7 collective bargaining agreements.</p> <p>8 In section 4.2, identifying what has to be in 9 collective bargaining agreements by referencing an 10 Annex D.</p> <p>11 Section 4.3, requiring certain steps that must 12 be taken before a contract is agreed upon.</p> <p>13 And section 4.4, duty to bargain, and I'll read 14 it:</p> <p>15 It is the State Treasurer's 16 determination pursuant to 17 MCL 141.1514a(10) that beginning 18 30 days after the effective date 19 of this agreement, the City is 20 not subject to section 15 of PERA 21 for the remaining term of this 22 agreement.</p> <p>23 These are significant powers that are allegedly 24 being bestowed upon not only the City Defendants but the 25 State Defendants. The powers also have implications, and</p> <p style="text-align: center;">11</p>

<p>1 those implications are that there is an enforcement 2 mechanism in this FSA. The enforcement mechanism is 3 found in section 6. If the City fails to comply -- 4 THE COURT: What page are you on? 5 MR. FILLIPE IORIO: I am on Exhibit A, 35, 6 Defaults and Remedies. Section 6 defines what are 7 material breaches in section 6.2 on page 36. It is a 8 material breach, for instance, if the City fails to 9 comply with the labor agreement section 4.2. And if a 10 material breach occurs, the State is granted ultimate 11 power in section 6.3. It's what I would refer to as the 12 nuclear option for any municipality; that being, the 13 State Treasurer has the ability to place the City in 14 receivership under the Emergency Manager Act. Page 38, 15 the very top: 16 The placement by the State 17 Treasurer of the City in 18 receivership as provided in -- 19 And then it gives the cite to the Emergency 20 Manager Act. That is the nuclear option that is present 21 in this FSA. That option would allow the divesting of 22 the democratically elected City Council of their 23 authority, divest even the Mayor of any authority, 24 appointing to a third party -- outside third party the 25 authority to conduct all business of the City.</p> <p style="text-align: right;">12</p>	<p>1 Mr. Duncan's original affidavit -- 2 THE COURT: Okay. 3 MR. FILLIPE IORIO: -- Exhibit D. 4 Unfortunately, both affidavits have lettered exhibits, so 5 I will refer to the initial affidavit first. 6 THE COURT: Exhibit D, did you say, or -- 7 MR. FILLIPE IORIO: Exhibit D, the letter from 8 Mr. Satchel -- 9 THE COURT: Okay. 10 MR. FILLIPE IORIO: -- to Mr. Duncan indicating 11 that they had no duty to bargain. I would direct your 12 attention to Exhibit E, which is a -- I'm sorry, Exhibit 13 F, which is another letter from the City of Detroit Labor 14 Relations Director to the labor mediator appointed by the 15 Michigan Employment Relations Commission. That's the 16 executive body charged with dealing with certain labor 17 relation matters. In that case, again, the City makes 18 clear that it is not going to be subject to mediation or 19 Act 312 because of the FSA. 20 The City repeats this claim in Exhibit G, 21 another June 12th letter to my client, where the City 22 indicates that it will be presenting changes to be made 23 to the terms of the contract to comply with the FSA. 24 That's the last paragraph in the first page of Exhibit G. 25 Exhibit I, again the City Director of Labor</p> <p style="text-align: right;">14</p>
<p>1 It's not surprising then because of this 2 tremendous penalty that is built into this agreement that 3 the City is taking the position that they're taking in 4 this case justifying their position that they do not have 5 to engage and are not subject to Act 312 binding 6 arbitration and that they will not even consider a 7 successor agreement with the DPOA, and they have not been 8 bashful about explaining that position. Again, we've 9 attached to Mr. Duncan's affidavit, his initial 10 affidavit, the City's position that's spelled out in 11 correspondence. The first is Exhibit D, which is a May 12 11th, 2012, letter, from Lamont Satchel, who is the 13 Director of Labor Relations to my client, Joseph Duncan. 14 And in that letter, he reminds Mr. Duncan that pursuant 15 to the financial stability agreement entered into between 16 the City and the State, the City's duty to bargain is 17 eliminated. 18 THE COURT: You're looking at the exhibits that 19 were attached to this affidavit that was supplied today? 20 MR. FILLIPE IORIO: This would be the original 21 affidavit that was supplied when we filed the complaint. 22 The affidavit that was filed today is a supplemental 23 affidavit, so I'm not referring to those exhibits -- 24 THE COURT: Okay. 25 MR. FILLIPE IORIO: -- yet. It would be</p> <p style="text-align: right;">13</p>	<p>1 Relations, again in a letter to my client, indicates that 2 it is terminating the agreement and will decide on a 3 case-by-case basis which types of rights it will -- in 4 the contract it will continue and which it will not 5 continue. 6 The DPOA submitted its petition for Act 312, 7 and that's attached as Exhibit J. I would note that the 8 State has acted upon the petition for Act 312. The body 9 charged with appointing the Act 312 arbitrators, MERC, 10 issued an initial panel of arbitrators this past week, 11 and the DPOA is committed to going forward with that 12 process, both mediation and Act 312. The State appointed 13 a mediator to have mediation on Friday, June 22. The 14 DPOA was prepared and ready to mediate. The DPOA and 15 their representatives showed up. The City did not 16 attend. The DPOA remains willing to mediate, and that is 17 identified in Joseph Duncan's supplemental affidavit. 18 The DPOA was compelled to file this action to 19 seek both declaratory judgment and injunctive relief to 20 uphold the State's mandated Act 312 process and to 21 prevent the Defendants from gutting the labor agreement, 22 which would eliminate the DPOA's primary purpose as an 23 organization to negotiate and enforce a contract. The 24 impact of the City's actions in stating it's not subject 25 to Act 312 will have a devastating impact on officer</p> <p style="text-align: right;">15</p>

<p>1 morale, the very type of thing that Act 312 is designed 2 to avoid.</p> <p>3 Your Honor, I would like to address some of the 4 legal arguments that have been advanced. We have 5 submitted an initial brief and two reply briefs. I did 6 receive this afternoon a brief from the City, which I 7 only had a chance to look at this afternoon. We've not 8 had an opportunity to respond to the arguments raised in 9 the City's brief in writing, in any event.</p> <p>10 The DPOA's legal argument is premised on 11 numerous cases and statutes, but the primary statute 12 that's involved here, your Honor, is Act 312. As this 13 Court is aware, Act 312 only applies to public safety 14 unions, including the police officers in this case. Act 15 312 sets forth substantive rights.</p> <p>16 Three of the most relevant substantive rights 17 in this proceeding are: Number one, binding compulsory 18 arbitration under MCL 423.233. Number two, maintaining 19 the status quo; in other words, during the pendency of 20 Act 312, existing wages, hours, terms and conditions of 21 employment must be maintained. That means the Defendant 22 cannot unilaterally make changes to those terms. And, 23 three, the public policy, which is spelled out in MCL 24 423.231, stating that the Act is to be liberally 25 construed.</p> <p style="text-align: right;">16</p>	<p>1 cannot have liveable neighborhoods. You can't have a 2 vibrant business environment.</p> <p>3 The rationale for Act 312, the tradeoff, 4 prohibiting police officers from striking while framing 5 binding arbitration to settle contracts, is necessary to 6 ensure labor peace and public safety.</p> <p>7 Another general point that should be noted, and 8 this is a very important point, Act 312 was recently 9 amended. It was amended by 2011 PA 116, which was 10 effective July 20, 2011. The amendments are significant 11 because they confirm that Act 312 is to take place even 12 where PA 4 consent agreements or even emergency managers 13 are in place.</p> <p>14 Act 3 -- er, Act 16 [sic], which amended Act 15 312, does a couple things. First, it compresses the time 16 for the hearing. It speeds up the hearing process. As 17 I've already mentioned and as is indicated in Duncan's 18 supplemental affidavit, the DPOA has already received 19 from the State, as has the City, a list of Act 312 20 arbitrators. The DPOA is prepared to select from that 21 panel and get on with the hearing.</p> <p>22 Act 312 also, though, is amended stating that 23 the most significant factor that the panel is to consider 24 is the municipality's ability to pay and to meet the 25 economic demands. And one of the factors in looking at</p> <p style="text-align: right;">18</p>
<p>1 The state-declared public policy in MCL 423.231 2 is clear, but the Michigan Supreme Court has continually 3 stated and restated that policy, and I'm quoting from the 4 <i>Detroit Firefighters</i> case, <i>City of Detroit</i>, 482 Mich 18, 5 page 29, and this Supreme Court is quoting a prior 6 Supreme Court, and I'm paraphrasing: When policemen 7 engage in a strike, the community becomes immediately in 8 danger by the withdrawal of services. Thus, under Act 9 312, if the public employer and the police officers' 10 bargaining unit have not reached an agreement concerning 11 a mandatory subject of bargaining and mediation proves 12 unsuccessful, either party may initiate binding 13 arbitration in order to avert a strike.</p> <p>14 If it's anywhere in this state important to 15 preserve and protect Act 312, it's in the city of 16 Detroit, the largest city in the state with the most 17 significant crime problem. There is no dispute, and you 18 can see this in Duncan's supplemental affidavit, that 19 public safety is the number one priority in the city of 20 Detroit. DPO officers, police officers are on the front 21 line. They are the ones who are charged with maintaining 22 safety. They are the first responders. They are the 23 ones charged with enforcing the criminal code and the 24 other codes. You cannot have qualities that you think of 25 in a first class city unless you have public safety. You</p> <p style="text-align: right;">17</p>	<p>1 the ability to pay is to address whether there are any 2 directives under PA 4. So, very clearly, the legislature 3 understood that Act 312 would continue even after a city 4 was put in a consent agreement --</p> <p>5 THE COURT: Where does it --</p> <p>6 MR. FILIPE IORIO: -- scenario.</p> <p>7 THE COURT: -- say that?</p> <p>8 MR. FILIPE IORIO: The cite for that, if 9 you'll give me a moment, please, I have it in the brief. 10 I -- if you'll give me a moment --</p> <p>11 THE COURT: Sure.</p> <p>12 MR. FILIPE IORIO: -- I'll get the statute. I 13 believe it's section 9 of the Act. I'm referring to MCL 14 423.239.</p> <p>15 THE COURT: 432 --</p> <p>16 MR. FILIPE IORIO: I'm sorry, 423.239, section 17 (1)(a).</p> <p>18 THE COURT: And that's of Public Act 312?</p> <p>19 MR. FILIPE IORIO: Correct. And subparagraph 20 four -- well, I'll read from 9(1)(a):</p> <p>21 The financial ability of the unit 22 of government to pay. All of the 23 following shall apply to the 24 arbitration panel's determination 25 of the ability of the unit of</p> <p style="text-align: right;">19</p>

<p>1 government to pay.</p> <p>2 And one of the four factors is:</p> <p>3 Any law of this State or any</p> <p>4 directive issued under the local</p> <p>5 government and school district</p> <p>6 financial accountability act --</p> <p>7 And then it cites the Emergency Manager Act.</p> <p>8 -- that places limitations on a</p> <p>9 unit of government's expenditures</p> <p>10 or revenue collection.</p> <p>11 And so the amendment to Act 312 clearly</p> <p>12 contemplated Act 312 continuing even after imposition of</p> <p>13 a consent agreement or even an emergency manager.</p> <p>14 The -- as I've indicated, there are six counts</p> <p>15 in Plaintiff's complaint. The first count I will address</p> <p>16 is the count for injunctive relief. And I don't believe</p> <p>17 there is any dispute with respect to the standard for</p> <p>18 injunctive relief. We've cited it in our brief. I think</p> <p>19 the Defendants have agreed that we've correctly cited the</p> <p>20 standard.</p> <p>21 I'll address the four factors, the first factor</p> <p>22 being the likelihood of prevailing on the merits. I</p> <p>23 would respectfully submit that the DPOA is likely to</p> <p>24 prevail on the merits of its claim. The first -- on</p> <p>25 separate independent grounds. The first ground would be</p> <p style="text-align: center;">20</p>	<p>1 not firefighters or police officers. That's called</p> <p>2 fact finding. It's a non-binding process that results in</p> <p>3 the appointment of a fact finder who makes</p> <p>4 recommendations. The PA 4 specifically stated that it</p> <p>5 was amending PERA, and the cite to PA 4 amending PERA is</p> <p>6 MCL 141.1514a(10).</p> <p>7 PERA was also specifically amended to reflect</p> <p>8 that it had been changed by PA 4. And the cite there is</p> <p>9 MCL 423.215(9). The legislature, when it enacted PA 4,</p> <p>10 did not touch Act 312. PA 4 doesn't mention Act 312.</p> <p>11 Act 312 does not mention PA 4 other than what I've</p> <p>12 identified as a factor for the arbitration panel to</p> <p>13 consider when rendering their decision and conducting</p> <p>14 their hearings.</p> <p>15 The omission of any amending language to Act</p> <p>16 312 must be considered intentional. It is a well-known</p> <p>17 principle that the legislature is presumed to be aware</p> <p>18 and, thus, to have considered the effect of all existing</p> <p>19 statutes when existing [sic] new laws. Defendants are</p> <p>20 asking this Court to write into Act 312 something that is</p> <p>21 not there. There is nothing nowhere in Act 312 that says</p> <p>22 it is limited by PA 4 or that it could be limited by some</p> <p>23 sort of consent agreement. If that was the legislature's</p> <p>24 intent, they would have put it in the statute, and they</p> <p>25 didn't.</p> <p style="text-align: center;">22</p>
<p>1 PA 4 does not amend Act 312. Act 312 is a statute that</p> <p>2 is separate and apart and survives in its entirety,</p> <p>3 notwithstanding the financial stability agreement and</p> <p>4 notwithstanding PA 4.</p> <p>5 Act 312 is also a statute separate from the</p> <p>6 Public Employment Relations Act, which I'll refer to as</p> <p>7 PERA. In looking at the briefs, it appears that some of</p> <p>8 the Defendants, and perhaps all of the Defendants, are</p> <p>9 arguing that because the Public Employment Relations Act,</p> <p>10 PERA, was amended by PA 4, that means that Act 312 by</p> <p>11 implication was amended. That is not the case.</p> <p>12 Act 312 is a statute separate from PERA, and</p> <p>13 there are substantive rights in Act 312 that are not</p> <p>14 present in PERA. Those substantive rights as I've</p> <p>15 mentioned before are the right to binding compulsory</p> <p>16 arbitration, the right to maintain the status quo, and</p> <p>17 the public policy which provides that Act 312 is to be</p> <p>18 liberally construed. The fact that section 15 of PERA</p> <p>19 has been suspended, allegedly, by PA 4 does not operate</p> <p>20 to suspend Act 312 rights. That would require a leap of</p> <p>21 logic that is not justified by the plain terms of the</p> <p>22 statute.</p> <p>23 First, PA 4 by its express terms amends PERA.</p> <p>24 PERA has an entirely different statutory framework for</p> <p>25 resolving disputes concerning public employees who are</p> <p style="text-align: center;">21</p>	<p>1 Second, Act 312 was amended after PA 4, and</p> <p>2 I've mentioned this previously. The amendment was</p> <p>3 effective to -- the Act 312 amendment PA 116 was</p> <p>4 effective on July 20th, 2011. As I mentioned also, the</p> <p>5 amendment to Act 312 reaffirmed the importance of Act 312</p> <p>6 to resolve contract disputes. The panel is expected to</p> <p>7 consider the municipality's ability to pay and to</p> <p>8 consider the limitations on government's expenditures or</p> <p>9 revenues on directives issued under PA 4, and that again</p> <p>10 is cited at MCL 423.239.</p> <p>11 The legislature clearly anticipates Act 312</p> <p>12 occurring under PA 4. There absolutely is no legislation</p> <p>13 anywhere that says that a public employer is not subject</p> <p>14 to Act 312 if there is a consent agreement. This Court</p> <p>15 should not legislate that into the language.</p> <p>16 The third reason that confirms that the DPOA is</p> <p>17 likely to succeed on this count is that this Court is</p> <p>18 bound to follow the Court of Appeals' decision in</p> <p>19 <i>Metropolitan Council v City of Center Line</i>, which is</p> <p>20 cited at 78 Mich App 281. This is controlling law. In</p> <p>21 this <i>Center Line</i> case, the City, the city of Center Line,</p> <p>22 made unilateral changes to wages by changing shift</p> <p>23 differentials and uniform allowances and other unilateral</p> <p>24 changes to working conditions while the parties were</p> <p>25 engaged in Act 312. The trial court enjoined the City</p> <p style="text-align: center;">23</p>

1 from making these changes, and the Court of Appeals
 2 upheld it finding that Act 312 is separate and distinct
 3 from PERA and that the court has jurisdiction to enforce
 4 the Act 312 status quo provision.

5 The Michigan Supreme Court in 2008 had a chance
 6 to review this holding and, in fact, commented on it and
 7 asked the parties to brief the issue of whether *Center*
 8 *Line* should be reconsidered. The Supreme Court case is
 9 the *Detroit Firefighters* case, 482 Mich 18, page 28,
 10 footnote 12. If you look at that footnote, very clearly
 11 the Michigan Supreme Court decided not to overturn or
 12 take any action on *Center Line*. *Center Line* remains good
 13 law and is controlling on this Court, and it provides the
 14 basis and other bases for finding that the DPOA is likely
 15 to succeed on the merits.

16 Finally, we've stated that even if this Court
 17 were to accept the argument that PA 4 amends Act 312,
 18 even though it doesn't say so anywhere on its face, the
 19 alleged amendment is constitutionally defective, and
 20 we've cited argument on the Michigan Constitution and the
 21 violation of the separation of powers and due process.

22 We've cited basic law. The legislature must
 23 promulgate not abrogate. That means if the legislature
 24 delegates certain authority to another person or
 25 legislative -- er, executive body, it must provide

24

1 standards that are reasonably precise to ensure against
 2 excessive delegation and misuse of delegated power. And
 3 we've cited the *Blue Cross Blue Shield*, Michigan Supreme
 4 Court case. In that case, the legislature enacted a wide
 5 ranging health care law. And one of the aspects was
 6 establishing a panel of actuaries who would have the
 7 power to engage in risk assessment analysis, thereby
 8 impacting costs. And the Supreme Court struck that down
 9 finding that there was absolutely no standards that would
 10 be employed by these actuaries in making this
 11 determination, finding that the power was open ended,
 12 there was no clarity, and they were immune from
 13 challenge.

14 If you look at the emergency manager provision
 15 that both the City Defendants and State Defendants are
 16 relying upon to suspend collective bargaining, the very
 17 same outcome would apply. And the section I'm referring
 18 to is under PERA, section 14a(10). If you'll just give
 19 me a moment, I'll grab that section.

20 THE COURT: That's of PA 4?

21 MR. FILLIPE IORIO: That is the PERA. I'm
 22 actually referring to the PERA provision.

23 THE COURT: Oh, right.

24 MR. FILLIPE IORIO: MCL 111.1514a(10).
 25 THE COURT: Okay.

13-53846-jt Doc 11102-7 Filed 04/21/16 Entered 04/21/16 12:24:19 Page 101 of 120

25

1 MR. FILLIPE IORIO: Let me get there.

2 THE COURT: I have 423.

3 MR. FILLIPE IORIO: 423.

4 THE COURT: .215?

5 MR. FILLIPE IORIO: .215, I believe.

6 THE COURT: Actually, I don't know if that's
 7 215. It's probably --

8 MR. FILLIPE IORIO: I'm sorry, I was referring
 9 to -- first I would refer to PA 4. We've cited it in our
 10 brief, and it's MCL 141.1514a(10):

11 Unless the State Treasurer
 12 determines otherwise, beginning
 13 30 days after the date a local
 14 government enters into a consent
 15 agreement under this Act, the
 16 local government is not subject
 17 to section 15.1 of PERA for the
 18 remaining term of the consent
 19 agreement.

20 There are no standards whatsoever that the
 21 State Treasurer is set to apply under that provision.
 22 And the Defendants have contended that there are other
 23 standards elsewhere in the statute, but the other
 24 standards do not apply to the State Treasurer's specific
 25 authority granted in this section. This is significant

26

1 authority, authority to say whether or not section 15
 2 collective bargaining will apply. And the fact that it's
 3 kind of a reverse veto doesn't change the analysis. At
 4 the end of the day, this provision purports to allow the
 5 State Treasurer to determine whether section 15 of PERA
 6 will apply. And that is, by definition, an improper
 7 unconstitutional delegation of power.

8 If you look at the emergency manager law and
 9 other provisions, for instance when an emergency manager
 10 is actually appointed, there are specific standards that
 11 apply that guide the emergency manager in the exercise of
 12 his authority. And I would point the Court, which we've
 13 cited in our brief, MCL 141.1519, which spells out the
 14 authority of an emergency manager.

15 Now, obviously there is no emergency manager
 16 appointed in Detroit. However, an emergency manager, if
 17 there was one, would have the authority to terminate,
 18 reject, modify collective bargaining agreements under
 19 subparagraph (k). However, there are four factors that
 20 the emergency manager would have to follow before taking
 21 such a drastic step. And those are spelled out, again,
 22 under subparagraph (k)(i), (ii), (iii), and (iv).

23 That is obviously missing from the State
 24 Treasurer's authority to suspend Act 15, and that is a
 25 constitutional defect that is not cured anywhere else in

27

<p>1 the statute.</p> <p>2 The fact that there are provisions that have to</p> <p>3 be applied in determining whether a consent agreement</p> <p>4 will be in place in the first place doesn't have any</p> <p>5 impact on whether or not the State Treasurer will or will</p> <p>6 not exercise his authority to suspend section 15 rights.</p> <p>7 And I think if you just think about it, let's</p> <p>8 say a municipality in Wayne County was under a consent</p> <p>9 agreement other than Detroit and in that municipality the</p> <p>10 State Treasurer said, "I'm not -- I'm going to revive</p> <p>11 section 15 rights." On what basis would the public</p> <p>12 understand why in Detroit he didn't revive section 15</p> <p>13 rights but in a neighboring municipality he did? It's</p> <p>14 absent. It's missing. That's a constitutional defect</p> <p>15 that is not cured. The legislature simply lost sight of</p> <p>16 its constitutional obligations in passing that aspect of</p> <p>17 PA 4.</p> <p>18 That is a separate argument for overruling that</p> <p>19 somehow PA 4 amends Act 312 separate and apart from the</p> <p>20 other arguments that I've already raised.</p> <p>21 THE COURT: Well, when you're referring to</p> <p>22 section 19(k) --</p> <p>23 MR. FILLIPE IORIO: Yes.</p> <p>24 THE COURT: -- which specifically does not</p> <p>25 apply to a -- to this kind of an agreement, it only</p> <p style="text-align: right;">28</p>	<p>1 MR. FILLIPE IORIO: Well, we would submit that</p> <p>2 they don't. I don't think the City and the State would</p> <p>3 state that. If you look at the actual terms of the</p> <p>4 consent agreement, the financial stability agreement in</p> <p>5 section 4.1, it does say the Mayor, in accordance with</p> <p>6 the law, has the right to terminate or modify contracts.</p> <p>7 THE COURT: Right. And that is in section --</p> <p>8 that's stated right above section (k) in (j). The Mayor</p> <p>9 can reject, modify, or terminate one or more terms and</p> <p>10 conditions of an existing contract.</p> <p>11 MR. FILLIPE IORIO: Yes. The -- we're not</p> <p>12 contending that somehow the emergency manager powers</p> <p>13 should be exercised by the City in this case. We're only</p> <p>14 pointing out, for purposes of contrasting, the State</p> <p>15 Treasurer's purported authority to suspend collective</p> <p>16 bargaining rights. There are no standards under which to</p> <p>17 evaluate how he's exercising those rights to suspend or</p> <p>18 revive collective bargaining. And that would just be</p> <p>19 comparing and contrasting (k), which you have with --</p> <p>20 THE COURT: But under section 9, it</p> <p>21 specifically says that a consent agreement may include a</p> <p>22 grant to the chief administrative officer or the chief</p> <p>23 financial officer, etcetera --</p> <p>24 MR. FILLIPE IORIO: Right.</p> <p>25 THE COURT: -- one or more of the powers</p> <p style="text-align: right;">30</p>
<p>1 applies to emergency financial managers that are</p> <p>2 appointed --</p> <p>3 MR. FILLIPE IORIO: Correct.</p> <p>4 THE COURT: -- under section 9. But in that</p> <p>5 language in (k), it -- it repeats the word existing</p> <p>6 collective bargaining agreements.</p> <p>7 MR. FILLIPE IORIO: It does.</p> <p>8 THE COURT: So how do you interpret that -- how</p> <p>9 do you interpret that in this situation because it's</p> <p>10 apparent that the collective bargaining agreement in this</p> <p>11 case terminated June 30th of '12?</p> <p>12 MR. FILLIPE IORIO: Well, I was merely pointing</p> <p>13 out the fact that the legislature in (k), which clearly</p> <p>14 doesn't apply here because there isn't an emergency</p> <p>15 manager, had the foresight to put standards in, the</p> <p>16 standards being (i), (ii), (iii), (iv). Before an</p> <p>17 emergency manager could terminate a contract, an existing</p> <p>18 contract, they'd have to follow these four steps.</p> <p>19 THE COURT: Right. So they could -- so the</p> <p>20 financial emergency -- er, emergency financial manager</p> <p>21 could terminate an existing contract.</p> <p>22 MR. FILLIPE IORIO: Yes.</p> <p>23 THE COURT: Whereas the way it's set up with</p> <p>24 this -- let's see, with the consent agreement, they don't</p> <p>25 have that authority to terminate an existing contract.</p> <p style="text-align: right;">120</p>	<p>1 prescribed for emergency managers in section 19. Okay.</p> <p>2 So they basically can have all the powers listed under</p> <p>3 section 19 (a) through (j) if it's included in their</p> <p>4 agreement. Do you agree with that?</p> <p>5 MR. FILLIPE IORIO: No, I don't. The last</p> <p>6 sentence of subsection 9 says they don't have --</p> <p>7 THE COURT: Right, except for (k).</p> <p>8 MR. FILLIPE IORIO: Except for (k), correct.</p> <p>9 THE COURT: I said (a) through (j) --</p> <p>10 MR. FILLIPE IORIO: Oh, right, I'm sorry.</p> <p>11 THE COURT: They can have (a) through (j),</p> <p>12 which includes reject, modify, or terminate one or more</p> <p>13 terms and conditions of an existing contract.</p> <p>14 MR. FILLIPE IORIO: I don't believe that (j)</p> <p>15 applies to labor agreements because (k) is a specific</p> <p>16 provision that would apply in the context of a labor</p> <p>17 agreement. I think (j) --</p> <p>18 THE COURT: Okay.</p> <p>19 MR. FILLIPE IORIO: -- would apply to other --</p> <p>20 other contracts.</p> <p>21 THE COURT: Other contracts.</p> <p>22 MR. FILLIPE IORIO: Otherwise, there would be</p> <p>23 no reason to have a (k). (K) is specifically -- specific</p> <p>24 application to labor agreement, and (j) would apply to</p> <p>25 existing contracts that the municipality may have with,</p> <p style="text-align: right;">31</p>

1 you know, non-labor contracts.
2 THE COURT: Okay.
3 MR. FILLIPE IORIO: So I would not agree that
4 the -- under a consent agreement that -- that they would
5 have the authority to simply terminate contracts and
6 modify them as they see fit.
7 THE COURT: Right. Only the emergency managers
8 can do that.
9 MR. FILLIPE IORIO: Yes, yes.
10 THE COURT: Existing contracts. But do we have
11 an existing contract here anymore?
12 MR. FILLIPE IORIO: Well, it's existing to the
13 extent that Act 312 provides that during the pendency of
14 an Act 312 process, the existing wages, terms, and
15 working --
16 THE COURT: Can't be changed.
17 MR. FILLIPE IORIO: -- conditions can't be
18 changed.
19 THE COURT: Okay.
20 MR. FILLIPE IORIO: And they continue, so.
21 THE COURT: So you're saying that after the
22 consent agreement was entered into --
23 Or was it before the consent agreement was
24 entered?
25 MR. FILLIPE IORIO: The consent agreement was

32

1 entered into -- and I don't have the exact date. It was
2 April in 2012. So it was before the contract expired.
3 It was in April of 2012, and the parties signed it at
4 different times, and the State Clerk had to certify it.
5 I think it was April 15th, 2012, when that occurred.
6 That occurred, though, well before the contract expired.
7 And the City was taking the position well before the
8 contract expired that it would not engage in Act 312
9 arbitration; that it would not engage in state-mandated
10 mediation, and that it would not entertain entering into
11 a successor agreement.
12 And the DPOA's position is, and I think it's
13 consistent with the law, is the City is subject to Act
14 312 notwithstanding what PA 4 says and notwithstanding
15 what the FSA says.
16 THE COURT: But the request for Act 312
17 arbitration wasn't filed until June 22nd of 2012.
18 MR. FILLIPE IORIO: No. The mediation -- the
19 Act 312 process started -- Exhibit C, which is the
20 initial step in the Act 312 process, and Exhibit C is
21 the --
22 THE COURT: April 27th --
23 MR. FILLIPE IORIO: Correct.
24 THE COURT: -- 2012.
25 MR. FILLIPE IORIO: And, again, the history is

13-53846-jt Doc 11102-7 Filed 04/21/16 Entered 04/21/16 12:24:19 Page 103 of 120

33

1 that the City the DPOA actually reached a tentative
2 agreement in February of 2012 where the DPOA agreed to
3 additional concessions. So the DPOA was hopeful that an
4 agreement could be reached, you know, without having to
5 go through the Act 312 process. That didn't actually
6 occur.
7 THE COURT: It wasn't reduced to writing, or
8 what?
9 MR. FILLIPE IORIO: It is reduced to writing,
10 yes. The City Council didn't take action on it. They
11 didn't take it up, and they didn't ratify it. And so it
12 is in writing, and the general terms are spelled out in
13 Joe Duncan's supplemental affidavit, which we did provide
14 today, as least the concessionary terms.
15 THE COURT: Okay. Thank you.
16 MR. FILLIPE IORIO: Okay. If I might just
17 continue looking -- again, this is related, but we also
18 have a count that provides that the FSA section 4.1 is
19 contrary to law and should be stricken on its face. That
20 provision purports to give the Mayor --
21 The Mayor shall have the
22 authority to negotiate,
23 renegotiate, execute --
24 And I am looking at, I'm sorry, page 32 of
25 Exhibit A:

34

1 The Mayor shall have the
2 authority to negotiate,
3 renegotiate, execute, amend,
4 modify, reject, or terminate
5 collective bargaining agreements
6 to the fullest extent authorized
7 by law and subject to the terms
8 of this agreement.
9 We just walked through PA 4, which plainly says
10 that a consent -- under a consent agreement, there is no
11 authority to terminate and modify. So what I hear the
12 Defendants saying is that because it's the fullest extent
13 authorized by law and it is not authorized by law, this
14 provision has no real force and effect, and if that's the
15 case, then they shouldn't be objecting to having it
16 stricken, and we don't object to having it stricken.
17 We've asked that it be stricken. There is a severability
18 clause in the FSA, and I think that's a perfect
19 opportunity to strike section 4.1 along with the other
20 section 4 provisions.
21 The second factor in the issue of injunctive
22 relief is irreparable harm. And the DPOA, through Joe
23 Duncan's initial affidavit and in his supplemental
24 affidavit, has clearly identified that there will be
25 particularized harm that can't be remedied with money

35

<p>1 damages. We don't dispute that injunctive relief is an 2 extraordinary remedy, but it has been issued in labor 3 cases, and we've cited a number in our brief. One is the 4 <i>Van Buren</i> case, which is a school case, a bus 5 subcontracting case which was decided before the law was 6 changed allowing a school district to subcontract school 7 bus services. But before the law was changed, the court 8 in <i>Van Buren</i> found that injunctive relief was necessary 9 because the subcontracting of the school bus drivers 10 would effectively terminate the union. There would be no 11 other purpose to have a union, and it would be difficult 12 to reconstitute its function if at some later point the 13 subcontracting was overturned.</p> <p>14 We also have attached an <i>AFSCME</i> case and a <i>City</i> 15 <i>of Detroit</i> case, again where labor injunctions were 16 issued to preserve union bargaining rights. We also 17 attached a Wayne County Circuit Court TRO from last year 18 where the DPOA got a TRO to prevent the City from 19 implementing changes to health insurance during the 20 pendency of Act 312, a matter that is very similar to 21 what we have here aside from the fact that a year ago, 22 there wasn't an FSA and a year ago the State wasn't 23 directing that the City to take these actions under 24 threat of being put in receivership.</p> <p>25 The irreparable harm in this case is more</p> <p style="text-align: right;">36</p>	<p>1 continue and steadfastly refuse to even entertain 2 entering into a successor agreement. There can be no 3 other monetary remedy to address that other than to say 4 what the law provides, and that is the City is subject to 5 Act 312, and the DPOA is entitled to its Act 312 process.</p> <p>6 THE COURT: So you're saying that if they can't 7 keep the binding arbitration, then they should be able to 8 strike?</p> <p>9 MR. FILLIPE IORIO: Well, the law prohibits 10 them from striking. So we're not saying that they're 11 going to strike. The law prohibits striking. The 12 rationale for Act 312 is that there is a prohibition on 13 striking. No one disputes that. And the tradeoff is 14 that there is this process in place to ensure a fair 15 hearing process where experienced, appointed officials 16 will hear the dispute on the successor contract. The 17 City is refusing to be subject to that. They wouldn't 18 even participate in state-mandated mediation. That can't 19 be remedied with money damages. That is a damage that is 20 irreparable, and if not enjoined could very well lead to 21 the type of low morale that Act 312 is designed to avoid. 22 And we've cited numerous Michigan Supreme Court cases 23 that cite this. This is not a novel theory that we've 24 come up with. This is the public policy of the State of 25 Michigan.</p> <p style="text-align: right;">38</p>
<p>1 pronounced than any of the cases we've cited, including 2 the one from a year ago. The City and the State are 3 permitted to unilaterally impose concessions. It renders 4 Act 312 a mere formality. It will make it non-effective. 5 It will create dissension and lower the morale of the 6 membership. It makes the union look powerless. It 7 violates public policy. There is no adequate remedy at 8 law to address those particularized harms.</p> <p>9 There is, I think, a requirement that we look 10 at the fact that we're looking at the largest city in the 11 state of Michigan where it's unquestioned that public 12 safety is the top priority, and that in order to avoid 13 labor strife, it is crucial that we preserve the Act 312 14 and collective bargaining rights.</p> <p>15 The irreparable harm also goes to the violation 16 of state policy. As I've indicated, state policy on Act 17 312 is written into the statute, MCL 423.231. Again, it 18 recognizes the tradeoff. Police officers cannot strike. 19 They are, therefore, provided this Act 312 mechanism to 20 ensure labor peace and to prevent harm to the public if 21 labor peace does not continue. I think it's very clear 22 that irreparable harm has been demonstrated. The City 23 and the State can simply terminate the contract, not just 24 terminate it but decide which, if any, provisions they'll 25 apply and which provisions they will continue or not</p> <p style="text-align: right;">37</p>	<p>1 As to the third factor, the DPOA also would 2 suffer more harm than the Defendant Cities. We're simply 3 asking -- Defendant City and State. We're simply asking 4 that the status quo as it relates to wages, hours, and 5 terms and conditions of work, as set forth in Act 312, be 6 continued during the pendency of Act 312.</p> <p>7 The City has filed an affidavit from 8 Jack Martin, the CFO, where he mentions economic and 9 financial issues that the City is suffering, and that 10 they need to generate savings. And I think they've cited 11 30 to 35 million in savings they want to extract from the 12 DPOA members by reducing wages and benefits even further 13 than what has been agreed and what had been agreed in the 14 prior contract. That isn't for this Court. That is for 15 the Act 312 arbitration panel.</p> <p>16 The City should be making the arguments that 17 they presented in the four page or five page Jack Martin 18 affidavit before the Act 312 panel. Act 312 says that 19 the arbitration panel must give the most significance to 20 the ability of the City to pay. I think that the Martin 21 affidavit, one, I don't think it's relevant as far as the 22 finances to any of the issues in this Court. It's only 23 relevant to point out that those are arguments that 24 should be made to the Act 312 panel. Not here. 25 We have attached an affidavit, the supplemental</p> <p style="text-align: right;">39</p>

<p>1 affidavit, of Joseph Duncan. I want to make sure our 2 position is clear. Our position is this whole issue of 3 the financial condition of the City is not relevant to 4 the issues before you today. But we have attached an 5 affidavit of Joseph Duncan, a supplemental affidavit, 6 where we have cited and attached numerous exhibits from 7 the business records of the City that lay out the City's 8 red book. The red book is the budget, and identified 9 numerous areas where the City has appropriated monies for 10 the 2012-2013 fiscal year that clearly don't have the 11 same type of priority that public safety does.</p> <p>12 We're not introducing those to say that somehow 13 this Court should entertain a discussion about whether 14 the priority should be funding the African-American 15 History Museum or Detroit police officers or funding 16 recreation in the city of Detroit or funding Detroit 17 police officers. That truly should be arguments that are 18 made to the Act 312 arbitration panel, but we've 19 presented that affidavit as a counter to the affidavit of 20 Jack Martin.</p> <p>21 I'd also note that the 30 to 35 million in 22 savings is a mere pittance in relation to the entirety of 23 the City's budget. The City's general budget is 24 1.1 billion. The total budget is almost \$3 billion. And 25 we've just pointed out well over \$30 million in cuts that</p> <p style="text-align: right;">40</p>	<p>1 act and that the City is subject to Act 312 and that all 2 of Act 312's substantive provisions apply; the binding 3 compulsory arbitration, the maintenance of the status 4 quo, and the liberal construction.</p> <p>5 We would submit under MCR 2.605 that there 6 clearly is an actual controversy present here. Under the 7 declaratory relief counts, this Court does not have to 8 find irreparable harm, and so we are also asking that the 9 Court declare, as we've stated in our briefs and in our 10 complaint, that the City is subject to Act 312, must 11 comply with Act 312, and the State cannot compel the City 12 to make changes to the collective bargaining agreement 13 that fall outside the status quo mandate of Act 312.</p> <p>14 The State has raised a couple arguments that 15 I'd like to address just briefly in their brief. First, 16 the State appears to argue that they are not a proper 17 party. We've submitted a reply brief.</p> <p>18 The State is an indispensable party in this 19 case. The FSA is the basis for each and every one of the 20 six counts. The State is inextricably intertwined with 21 the City, and, again, I'd point to the financial 22 stability agreement, section 4 and section 6. Section 4 23 purports to define what the City must do with regards to 24 its labor contracts with the DPOA, and section 6 provides 25 the enforcement mechanism. If the City doesn't comply,</p> <p style="text-align: right;">42</p>
<p>1 could be made before you impose further cuts on the 2 wages, salaries, and benefits of the Detroit police 3 officers.</p> <p>4 Finally, factor number four, injunctive relief 5 promoting the public interest. I think it's very clear 6 that the public interest in this case is as stated in Act 7 312, the public policy: Maintaining labor peace, 8 avoiding the public harm that could ensue if morale of 9 police officers is lessened. I think that's especially 10 true in the city of Detroit, again where violent crime is 11 a real problem. And we've cited from the City's website 12 in Joe Duncan's initial affidavit just some recent crime 13 statistics, and those are Exhibits L and Exhibits K. 14 Again, those are taken directly from the City's website. 15 Those are business records that --</p> <p>16 THE COURT: Now is this the exhibits attached 17 to the supplemental affidavit of Duncan?</p> <p>18 MR. FILLIPE IORIO: I'm sorry, those are 19 exhibits attached to the original affidavit.</p> <p>20 THE COURT: Okay.</p> <p>21 MR. FILLIPE IORIO: The DPOA is also seeking 22 declaratory relief. They have filed several counts, as 23 I've mentioned, that ask that this Court issue a 24 declaratory judgment essentially finding that Act 312 is 25 not affected by either PA 4 or the financial stability</p> <p style="text-align: right;">41</p>	<p>1 it could be placed in receivership. And so to say 2 somehow that the State is not a proper party or the State 3 is not involved in this is, with all due respect, 4 disingenuous and doesn't really take into account the 5 undisputed facts here, which are the State initiated the 6 financial review, the State negotiated and then 7 implemented the financial stability agreement, in which 8 it is directing the City to do certain things. The 9 things that the DPOA is concerned about are the things 10 that are taking away its rights under Act 312.</p> <p>11 The City, through its counsel from the Mayor's 12 Office and the Deputy Mayor and the Police Chief, argue 13 in their brief that Act 312 is somehow just a procedure 14 and that it relies upon PERA, the Public Employment 15 Relations Act, implying that somehow if PERA is 16 suspended, by implication then Act 312 must be suspended. 17 And I've addressed that already, but there is no repeal 18 by implication, and we've cited cases to that effect. 19 The legislature knows how to repeal or amend a statute. 20 You don't say that because PERA was amended, then by 21 implication Act 312 is amended.</p> <p>22 Beyond that, Act 312 has real substantive 23 rights over and above what non-public safety employees 24 have. And I've discussed those at length, but I won't do 25 that again.</p> <p style="text-align: right;">43</p>

<p>1 The City is also essentially asking you to 2 overlook but really wants you to overrule the <i>Center Line</i> 3 case, the Michigan Court of Appeals case, which I've 4 cited, from 1977, 78 Mich App 281, and, again, that is 5 controlling law. Even if this Court were to say they 6 don't agree with the <i>Center Line</i> holding, it does 7 control.</p> <p>8 The City Council for the Mayor and the Deputy 9 Mayor and the Police Chief also argue about the finances 10 and the financial condition of the City. We would, 11 again, present that that's not relevant to the matter 12 before this Court. The issue of the financial status of 13 the City is something that should rightly be addressed by 14 Act 312 panel. The DPOA has addressed that. They've 15 addressed it in their last contract where they agreed to 16 concessions, and they addressed it again in February of 17 2012 where they agreed to concessions. That's not really 18 a factor for this Court.</p> <p>19 The Act 312 panel will be -- will have the 20 special expertise to deal with the claims that the City 21 simply doesn't have the ability to meet the financial 22 demands of the DPOA, and we would submit that it's not 23 relevant, clearly not relevant on the declaratory 24 judgment counts and also not relevant as to the 25 injunctive standards because it cannot outweigh the</p> <p style="text-align: right;">44</p>	<p>1 refusing to be subject to Act 312, for refusing to engage 2 in mediation, and for refusing to agree upon a successor 3 agreement.</p> <p>4 The claims against the State and City are 5 intertwined. There is not a true, separate count against 6 the City. All are dependent, all six counts are 7 dependent upon an analysis of the FSA contract. We would 8 submit that the DPOA is a third party victim of this 9 contract that was entered into between the City 10 Defendants and the State Defendants.</p> <p>11 The DPOA is seeking to invalidate terms and 12 provisions of the FSA that the City and State maintaining 13 would restrict the DPOA's rights under Act 312. As such, 14 we submit that jurisdiction is proper in this Court as to 15 all six claims even those claims that have the first four 16 counts where the City is listed as a Defendant as arising 17 from a contract pursuant to the clear statute in 18 <i>Parkwood</i>.</p> <p>19 As an alternate argument, we would present that 20 the Court has jurisdiction, concurrent jurisdiction under 21 MCL 600.6419(a), and that is claims that are ancillary to 22 a claim filed in the Court of Claims. And that provision 23 provides that in addition to the powers and jurisdiction 24 conferred upon the Court of Claims by section 6419, the 25 Court of Claims has concurrent jurisdiction of any demand</p> <p style="text-align: right;">46</p>
<p>1 public policy of Act 312.</p> <p>2 As I mentioned, your Honor, I just received the 3 City of Detroit's brief from Mr. Andrew Jarvis this 4 afternoon. And in that brief he raises an argument that 5 was not raised by the other Defendants, and that is 6 jurisdiction. We have not briefed the jurisdiction 7 issue. We would be willing to; not that we want to write 8 anything additional. I know we've provided the Court 9 with a number of documents, but to the extent the Court 10 is going to entertain the jurisdictional issue, we are 11 willing to brief that.</p> <p>12 The City appears to claim that the -- through 13 the corporate counsel, that the Court lacks jurisdiction 14 over the City. And we would just say the following with 15 respect to that: Number one, the Court of Claims has 16 jurisdiction under MCL 600.6419(1)(a) all claims ex 17 contractu, and that would be any claims arising from a 18 contract.</p> <p>19 The <i>Parkwood</i> Supreme Court case is particularly 20 relevant in analyzing that aspect of the Court of Claims 21 jurisdiction. In <i>Parkwood</i>, the court said it's the 22 nature of the claim that determines whether the Court of 23 Claims has jurisdiction. The nature of each and every 24 one of Plaintiff's counts is premised on the FSA because 25 that is the only basis that the City is giving for</p> <p style="text-align: right;">45</p>	<p>1 for equitable relief and any demand for a declaratory 2 judgment when ancillary to a claim filed pursuant to 3 section 6419.</p> <p>4 And we would submit that the -- every one of 5 the counts, Counts I through IV involving both the State 6 and the City, to the extent we've listed the City, 7 there -- there is ancillary jurisdiction. Now, that 8 phrase is not defined in the Court of Claims. They don't 9 define ancillary jurisdiction, but there are other cases 10 that do. And under the other cases that look at 11 ancillary claims, again we have haven't briefed this 12 because we didn't recognize that that argument would be 13 raised by any of the Defendants, but in <i>WPW Acquisition v</i> 14 <i>City of Troy</i>, 254 Mich App 6, at page 9, a 2002 Michigan 15 Court of Appeals case, the court outlined the standard 16 for ancillary jurisdiction stating it should attach 17 where:</p> <p>18 The matter arises from the same 19 transaction that was the basis of 20 the main proceeding, or arises 21 during the course of the main 22 matter, or is an integral part of 23 the main matter.</p> <p>24 (2) the matter can be determined 25 without a substantial new</p> <p style="text-align: right;">47</p>

<p>1 fact-finding process.</p> <p>2 (3) determination of the</p> <p>3 ancillary matter through an</p> <p>4 ancillary order would not deprive</p> <p>5 a party of a substantial</p> <p>6 procedural or substantive right.</p> <p>7 (4) the ancillary matter must be</p> <p>8 settled to protect the integrity</p> <p>9 of the main proceeding or to</p> <p>10 insure that the disposition in</p> <p>11 the main proceeding would not be</p> <p>12 frustrated.</p> <p>13 So we would submit as an alternative the Court</p> <p>14 would have jurisdiction under 600.6419(1)(a). It's</p> <p>15 difficult to contemplate how we could have a proceeding</p> <p>16 in this Court and a proceeding in another court where</p> <p>17 both courts would be charged with looking at the FSA and</p> <p>18 determining whether certain provisions should be deemed</p> <p>19 unenforceable or stricken as it relates to the DPOA.</p> <p>20 I would also just comment on Justice Young's</p> <p>21 concurrence in <i>Parkwood</i> where he commented that the</p> <p>22 jurisdictional provisions set forth in the Court of</p> <p>23 Claims Act are, quoting:</p> <p>24 Unquestionably less than clear.</p> <p>25 Unquote. We would say that the jurisdiction of</p> <p style="text-align: right;">48</p>	<p>1 continued the injunction, the City would be prohibited</p> <p>2 from laying off in lieu of altering other conditions of</p> <p>3 employment.</p> <p>4 MR. FILLIPE IORIO: Not exactly. I'm saying</p> <p>5 that if -- they've cited Article 6 of the labor</p> <p>6 agreement. If that article of the labor agreement as</p> <p>7 they say allows them to lay off, then that would have</p> <p>8 been an existing term that would have to have been</p> <p>9 continued.</p> <p>10 THE COURT: So they could lay off.</p> <p>11 MR. FILLIPE IORIO: Yeah. I don't have the</p> <p>12 full Article 6 in front of me. Like I said, I just</p> <p>13 looked at it today. But if, as they say, Article 6</p> <p>14 allowed them to lay off, you know, when the contract was</p> <p>15 in effect, then that would be an existing term that would</p> <p>16 have continue. Again, I don't have Article 6 here. I</p> <p>17 haven't had a chance to kind of look at that.</p> <p>18 THE COURT: Okay. I think it's attached to</p> <p>19 something.</p> <p>20 MR. FILLIPE IORIO: It is. In closing, I think</p> <p>21 it's important to note, again, and reaffirm what the DPOA</p> <p>22 is asking here. We're not asking for the Court to throw</p> <p>23 out the FSA in its entirety. We're not asking that the</p> <p>24 Court overrule and find unconstitutional the PA 4.</p> <p>25 That's not what we're here for.</p> <p style="text-align: right;">50</p>
<p>1 this Court is clear, though. All of these claims are</p> <p>2 arising out of the FSA, which is undoubtedly a contract</p> <p>3 and, therefore, jurisdiction does rest with this Court.</p> <p>4 Your Honor, in closing -- oh, one more argument</p> <p>5 that the City appeared to raise in their brief that I'd</p> <p>6 like to just mention. The City had an argument somehow</p> <p>7 that the -- they raised layoffs on page 13 of their brief</p> <p>8 under a heading, "The City had the contractual right</p> <p>9 under Article 6 of the now expired CBA to lay off and</p> <p>10 restructure its police department," somehow contending</p> <p>11 that the injunction would harm that right.</p> <p>12 The DPOA is not contending that somehow the</p> <p>13 City is enjoined or should be enjoined from taking</p> <p>14 actions that they're otherwise entitled to do. For</p> <p>15 instance, if the contract allows them to lay off in the</p> <p>16 manner in which they've cited in their brief, then the</p> <p>17 injunction wouldn't prevent them from doing that. The</p> <p>18 injunction only prevents them from changing existing</p> <p>19 wages, hours, and terms and conditions of employment. So</p> <p>20 if one of those existing conditions of employment was the</p> <p>21 right to lay off, as they claim in their brief, then that</p> <p>22 would -- that would be an existing working condition that</p> <p>23 would have to be continued. So I don't understand their</p> <p>24 argument.</p> <p>25 THE COURT: So you're saying that if I</p> <p style="text-align: right;">49</p>	<p>1 We're here for the very specific reason that</p> <p>2 applies primarily to my client, and that is they have a</p> <p>3 right under state law to Act 312 arbitration. That right</p> <p>4 has not been affected by either PA 4 or the FSA. The</p> <p>5 fact that the State is directing the City through the FSA</p> <p>6 to take certain actions against my client through the</p> <p>7 labor agreement process does not and cannot be used to</p> <p>8 obstruct or prevent my client from their right to Act 312</p> <p>9 arbitration. My client has from the beginning been</p> <p>10 reasonable and willing to negotiate, to mediate, and to</p> <p>11 go through the Act 312 process. We ask that this Court</p> <p>12 allow that process to continue and to not do anything</p> <p>13 that would obstruct it.</p> <p>14 And I would say, again, that the MERC has</p> <p>15 already appointed a suggested panel of arbitrators, and</p> <p>16 the DPOA will be taking action to ensure that the time</p> <p>17 frames are complied with so that can be conducted in an</p> <p>18 efficient and timely manner. Unless the Court has any</p> <p>19 other questions, I'd reserve any, I guess, time to</p> <p>20 respond to any of the Defendants' arguments.</p> <p>21 THE COURT: Okay. Thank you, very much.</p> <p>22 Okay. Who wants to go first?</p> <p>23 Okay. And you're Mr. Jarvis?</p> <p>24 MR. JARVIS: Jarvis.</p> <p>25 THE COURT: Jarvis.</p> <p style="text-align: right;">51</p>

1 MR. JARVIS: Judge, I know there's been a lot
2 raised by the Plaintiffs in this case, but I do want to
3 bring back the argument that I raised in the City's brief
4 with respect to the Court's jurisdiction. This matter at
5 its heart is a labor dispute between the DPOA and the
6 City of Detroit, Judge. And I think the appropriate way
7 to resolve these is in MERC.

8 One of the points that I'd also like to make is
9 the fact that the labor contract is currently expired,
10 Judge. With that in mind, this duty to bargain that the
11 Plaintiffs keep bringing up, I don't believe it exists
12 anymore. This matter was certainly thrown in the Court
13 at the last minute. And I'd like to indicate too that
14 Public Act 4 and the FSA are valid.

15 I don't -- I think I briefed --

16 THE COURT: Have there been any holdings on
17 that issue? I know there's been litigation involving PA
18 4, but have there been any definitive rulings on PA 4's
19 constitutionality?

20 MR. JARVIS: None that I know of, Judge.

21 THE COURT: Or upheld on any other basis?

22 MR. JARVIS: None that I know of, Judge.

23 THE COURT: Okay.

24 MR. JARVIS: And one of the things that I think
25 is important for the Court to note is, is that there

52

1 seems to be this misunderstanding of what Public Act 312
2 is all about. Public Act 312 is to assist -- is to
3 assist parties in collective bargaining when they can't
4 reach an agreement. That's intertwined with the duty to
5 collectively bargain. When that duty no longer exists,
6 Act 312 no longer is applicable. And I think there's
7 been a number of case that talked about that some and
8 I've cited in my brief.

9 Judge, one of the things that the Plaintiffs
10 fail to recognize is the fact that the legislature
11 enacted this legislation. They understood what it was.
12 And Public Act 4 clearly gives the ability of the City of
13 Detroit, after the expirations of the contracts, to do
14 what they did. Do you have any further questions?

15 THE COURT: So your brief is -- it looks like a
16 brief attached to a brief. Okay. That's not it. Okay.
17 I've read it. I don't believe I have any other
18 questions.

19 MR. JARVIS: Thank you, Judge.

20 THE COURT: You're welcome.

21 Mr. Murphy, or Mr. -- who wants to go next?

22 MR. MURPHY: I guess it's my turn. Good
23 afternoon, your Honor. Michael Murphy appearing on
24 behalf of the Defendant Governor, the Defendant State
25 Treasurer, and the Defendants Detroit Fiscal Review Team.

53

1 The -- the beginning of Plaintiff's arguments
2 intrigued me because he talked about the public safety,
3 the safety of the citizens of the city of Detroit, the
4 safety of visitors to the city of Detroit, the
5 difficulties faced by the Detroit police officers. Their
6 brief was replete with instances of how they're
7 underpaid.

8 The affidavit, at least supplied to me today,
9 was pretty clear to me an Act 312 submission to
10 your Honor. That was well put together if your Honor was
11 going to impose a contract on the City of Detroit, which,
12 of course, is not the position you find yourself in.

13 I know personally city of Detroit police
14 officers. I was born and raised with -- in the city of
15 Detroit, and some of my friends I went to Detroit public
16 schools with became Detroit police officers. The safety
17 in the City is of critical importance. So is the fiscal
18 integrity of the City, the fiscal stability of the City,
19 the ability of the City to pay its bills. It's not just
20 its police force. It's its existence that was at stake.

21 And this didn't happen overnight. And it
22 didn't happen because of the DPOA alone. It didn't
23 happen because of the Detroit firefighters alone or any
24 of the unions alone or decades of financial mismanagement
25 or the State closing its eyes to what was going on, but

54

1 we found ourselves in this position, and something had to
2 be done, and something was done in an attempt to keep the
3 fiscal stability of the system intact.

4 I may not agree with the decisions made, you
5 may not agree with the decisions made, the DPOA may not
6 agree with the decisions that were made, but those aren't
7 our decisions to make. It's for the legislature to make.

8 We talk about improper delegation of
9 legislative authority, and I'm going to quote from
10 Mr. Iorio's well written brief on page 11 and 12:

11 PA 4 purports to give the
12 Treasurer unfettered discretion,
13 with absolutely no limits, in
14 determining whether section 15(1)
15 will be applied or not.

16 I think it's a well written sentence.
17 Absolutely wrong, though, because if you read the statute
18 that he quotes up above it: Unless the State Treasurer
19 determines otherwise, beginning 30 days after the date
20 the agreement's signed with the local government, that
21 local government is not subject to section 15(1).

22 So the Treasurer is not taking away the right
23 to bargain. The legislature is. The Treasurer can
24 restore it, but he can't take it away. It's gone;
25 30 days. That's not any discretion on his part. It's

55

<p>1 gone unless he determines otherwise. That's not a 2 delegation of legislative authority that Mr. Iorio has 3 presented throughout all his briefs. That's the 4 legislature saying, "It's gone. Now, Treasurer, if you 5 make some determination throughout the course of the 6 agreement that some of those things should be restored, 7 you can do so, but, otherwise, it's gone." 8 You have to look at PA 4 as a whole and not 9 just to the action and the practical necessities that 10 flow from it. One of the things in legislative 11 delegation is, you must look -- presume first that the 12 Act is constitutional and as well as look at the Act as a 13 whole. What is the whole scheme of PA 4, not just what 14 does section 1514a(10) do, but what is the entire purpose 15 and scope of the Act before you can make any 16 determination that the legislature has improperly 17 delegated its authority. I think my brief is fairly 18 clear on that issue; that there has been no improper 19 delegation of authority. 20 Well, that's the first two counts of their 21 complaint; that the State somehow improperly delegated 22 its authority to the State Treasurer, to the Detroit 23 Fiscal Review Team. I still haven't, in reading the 24 complaint four or five times, I still haven't seen any 25 allegations about the Fiscal Review Team other than they</p> <p style="text-align: center;">56</p>	<p>1 of my abilities. 2 THE COURT: Well, it's just -- I mean, you want 3 me to -- I mean, you asked a question, and I can answer 4 it. I mean, I can read what it says in the last three 5 paragraphs of the TRO. 6 MR. MURPHY: I know what it says in the last 7 three paragraphs, but I don't have anything to do with 8 those procedures so I don't know whether I'm violating or 9 not. I'm trying not to, that's for sure. I haven't done 10 anything or directed my clients not to do anything to 11 interfere with the Act 312 procedure. 12 In fact, I think you heard Mr. Iorio state 13 today that MERC has already issued names of mediators. 14 Is that what your statement was? I don't want 15 to misquote you. 16 THE COURT: I believe he said -- 17 MR. FILLIPE IORIO: Yes. 18 THE COURT: -- that they've issued a panel of 19 arbitrators and -- 20 MR. MURPHY: So if you took my control over my 21 clients to its extreme, I suppose we could have called 22 MERC and told them not to send out mediators, but we 23 didn't do that. The mediator names went out, so 24 obviously MERC is doing what it's supposed to do. And 25 they aren't a defendant here, only the State Treasurer</p> <p style="text-align: center;">58</p>
<p>1 are charged under PA 4 with negotiating and signing the 2 agreement. But once the agreement is signed, that's an 3 agreement between the parties, the City of Detroit and 4 the State of Michigan. 5 Now, I looked at it from another aspect: Why 6 am I here? If this Court were to enjoin the Governor and 7 the State Treasurer and the Detroit Financial Review Team 8 from, what, from entering the Fiscal Stability Agreement? 9 Too late. It's all been signed. So what are you 10 preventing us from doing? Act 312? PERA is pretty 11 clear, and so is Act 312. That procedure is between the 12 public employer, City of Detroit, and the union, DPOA. 13 Not us. So if you enjoined us but didn't enjoin the 14 City, would Act 312 go forward? No. Nothing would 15 happen. Nothing would change. So I keep asking myself, 16 why am I here under an injunction preventing me from 17 doing what? 18 THE COURT: Well -- 19 MR. MURPHY: Is it preventing me from -- 20 THE COURT: -- look at the injunction. 21 MR. MURPHY: I looked at it, and I read it a 22 couple times. It still doesn't seem to prevent me from 23 doing anything or telling me to do anything. It does 24 tell the City. It uses Defendants plural a few times so 25 I fall into that category, so I'm obeying it to the best</p> <p style="text-align: center;">57</p>	<p>1 and the Governor. So I don't know what I can do in 2 relation to Act 312. 3 I'd like to point out that I've heard over and 4 over again, "We're not attacking the entire FSA 5 agreement. We're not attacking PA 4 as a whole. We're 6 only concerned because it attacks our little fiefdom of 7 the DPOA of Act 312, and that's what we want to protect." 8 Yet, they go on to argue that the range of options under 9 the FSA, such as what they call their nuclear options or 10 remedies in the FSA, emergency managers, receiverships, 11 state control over the approval of cities into the 12 capital markets, withholding discretionary state revenue 13 payments, not those that are mandatory under the 14 constitution, elimination of democratic representatives, 15 all of those things are required under the agreement or 16 under PA 4 to save the City. 17 And if we go to 312 and we get -- and the City 18 were to get something that it could not live with and 19 came to us and it looked like it was a breach of the FSA, 20 then that's what's going to happen. That's what's -- 21 THE COURT: Can the -- 22 MR. MURPHY: -- being asked for. 23 THE COURT: Can the consent agreement be 24 converted to the -- to having an emergency -- 25 MR. MURPHY: Emergency manager? Yes, it can.</p> <p style="text-align: center;">59</p>

1 THE COURT: Okay.
2 MR. MURPHY: If the consent agreement is
3 materially breached or, for example, the City enters an
4 operation plan, say "We're going to do A, B, and C to get
5 to a certain level financially," and they do not follow
6 that plan, the State Treasurer can go to the Governor and
7 say, "You have to declare them in receivership," an EM
8 would be appointed, and everything that the DPOA has
9 worked for and the City of Detroit has worked for is
10 gone. And now we'll have an emergency manager, and we'd
11 probably be back here but not for long and under
12 different circumstances.
13 This has been going on for years and years and
14 years. We have to understand too that the DPOA is close
15 to 3,000 members of an 11, 12,000-person workforce with
16 48 units -- unions, which means they are the big boys.
17 They run the show in the City even over the firefighters.
18 I'm surprised they're not here with you.
19 We know what -- so the DPOA goes, so goes every
20 union in the City. It's a practicality. It's realty.
21 We deal with it, and so they're the ones here. Only the
22 firefighters, though, and the DPOA are allowed 312
23 arbitration. There's been an argument that because the
24 legislature amended 312 subsequent to PA 4, that somehow
25 that magically just makes 312 always operational under a

60

1 consent agreement. I don't think so, and I would take
2 issue with that. I think it could be operational under a
3 consent agreement if the Treasurer were to restore the
4 PERA bargaining rights under the consent agreement, which
5 the Treasurer has the discretion to do.
6 We've heard over and over again how the
7 Treasurer takes them away. No, the Treasurer doesn't.
8 The legislature takes them away. The Treasurer can give
9 it back. And if the Treasurer were to give it back under
10 circumstances that the City felt was necessary, then Act
11 312 could come back into play at some point for the
12 firefighters and/or police officers, and then the
13 provision of 312 amended, that would have to be taken
14 into consideration by an arbitration panel would come
15 into play.
16 It may have come into play -- I'm not going to
17 tell the Court it has -- for other emergency managers who
18 are still actively bargaining with unions, entering
19 contracts; in other words, not imposing them, and 312
20 could come up, and it could go to arbitration even for an
21 emergency manager who wants to bargain. So that
22 amendment is very obviously needed for situations where
23 bargaining is still taking place.

24 As far as the standards for injunctive relief,
25 I can make as strong an argument that the public interest

61

1 demands this injunction be lifted as the DPOA has made
2 that the injunction should stand. And if I can make that
3 argument from the point of view of the Governor, the
4 Treasurer, and, in essence, the People of the State who
5 have spoken through this legislation, then they haven't
6 carried that portion of the injunctive relief because the
7 public interest here is that the city of Detroit survive.
8 It's unfortunate, but it's not in the best public
9 interest necessarily that the DPOA survive, as harsh as
10 that may sound, but it is in the public interest that the
11 city of Detroit survive. And that's what this stability
12 agreement is about.
13 If your Honor only knew what I personally have
14 gone through regarding this fiscal stability agreement
15 and how important it is to so many people, even though I
16 personally may disagree with a lot of its terms, it isn't
17 for me to decide. I've argued this in court over and
18 over again; it isn't for me to decide. This is a policy
19 decision that was made by the People's representatives,
20 their elected Governor, and for the Citizens of Detroit,
21 their elected City Officials because unfortunately for
22 decades nobody has decided to make any decisions, and
23 this is what it's come down to. That's the public
24 interest. That's what public interest is defined as,
25 that type of thing, and that clearly the DPOA hasn't

62

1 carried.
2 They haven't carried likelihood of success on
3 the merits at least as to the State Defendants because
4 there is nothing we can do. We don't sit at the Act 312
5 table. Only the City does. They -- they can force us to
6 come in, but there is nothing we can do. They're
7 employed by the City of Detroit unless, of course, they
8 want to take the last vestige of independence from the
9 city officials and say that the State of Michigan is now
10 the City of Detroit; then we don't need the Mayor, we
11 don't need the City Council, and we don't need this
12 fiscal stability agreement, and we'll just appoint an
13 emergency manager. This is what's been desperately
14 trying to be avoided by all of the parties involved
15 because they don't feel it's in the best interest of the
16 People. Yet, if the DPOA is successful, that's what
17 they're going to get, and I can't control that.

18 Now, the Court of Claims Act that Mr. Iorio
19 discussed, I've been involved with that for quite awhile.
20 As your Honor is well aware, when the Court of Claims Act
21 was passed, although it was many, many years ago, this
22 Court was set up as the Court of Claims, but it's a
23 separate, distinct statutory court. Circuit Court is a
24 court of general jurisdiction constitutionally provided
25 for. Court of Claims is statutory specific: Contract

63

1 actions, criminal fine actions against the State, its
2 boards, commissions, etcetera.

3 The ancillary jurisdiction talked about by
4 Mr. Iorio is there, but it's not for all of the People.
5 It's for claims. In other words, before when the Court
6 of Claims Act was first passed, you could file a breach
7 of action -- contract action against the State for money
8 damages, but you couldn't file injunction, dec. actions,
9 equitable actions against the State in the Court of
10 Claims. There was no jurisdiction. That had to be filed
11 in circuit court, Ingham Circuit Court.

12 Later the statute was amended. The Court of
13 Claims Act was amended so you could bring ancillary
14 claims against the State within the Court of Claims,
15 action for injunction, for equitable relief, but there is
16 no jurisdiction in this Court against any party other
17 than the State of Michigan, which means any order you
18 enter against the City of Detroit and/or its leadership
19 is void Latin ab initio, no effect or force because you
20 have no jurisdiction over them.

21 Any order you enter against me, the Governor,
22 and the State in their -- and our State Treasurer acting
23 in their official capacity or the Detroit Financial
24 Review Team as a state board, you have both equitable and
25 legal jurisdiction because this does involve a contract.

64

1 So if you order the City of -- er, the State
2 and the Governor to do something under 312, we can't do
3 it because we're not the public employer. And if you
4 order the City of Detroit, they don't have to do it
5 because you have no jurisdiction over them. So that's
6 where we stand, and that's where we are today for the
7 practicality.

8 THE COURT: So why do I get these cases in the
9 Court of Appeals involving Wayne County?

10 MR. MURPHY: I have no idea unless it's --

11 THE COURT: When Wayne County is a Defendant.

12 MR. MURPHY: Social services? Wayne County --
13 well, that's a --

14 THE COURT: Property tax cases.

15 MR. MURPHY: Property tax cases, I don't have
16 -- unless it's turned over to the State Treasurer for
17 collection and then the State Treasurer becomes the
18 nominal Defendant. But in this case, it's just us. I'll
19 entertain any questions you may have.

20 THE COURT: I don't know if you want to address
21 it about Act 312, that that's separate and distinct from
22 PERA and the fact that the amendment -- well, I'll just
23 strike that question.

24 MR. MURPHY: Okay, I think I briefed some of
25 that in my brief, not a lot, but there is, I think, case

13-53846-tjt Doc 11102-7 Filed 04/21/16 Entered 04/21/16 12:24:19 Page 111 of 120

65

1 law. I think 312 is a supplement to PERA. I think it
2 works hand in hand with PERA. I think logically it
3 follows 15(1) of PERA gives you the duty to bargain. If
4 that's gone, no bargaining, no impasse, no 312. In other
5 words, if the -- there is no bargaining, you can never
6 get to 312.

7 THE COURT: So 15(1) basically applies to all
8 labor unions.

9 MR. MURPHY: All labor unions, not just DPOA.
10 All of them. There is no duty to bargain. I don't know
11 -- I won't be so presumptuous to say what agreements are
12 expiring with the City of Detroit. I know the police
13 officers are. I don't know about the others. But as I
14 said before, as DPOA goes, so goes the others.

15 THE COURT: Okay. Thank you, very much.

16 Okay. Who wants to go next? You're
17 Mr. Willems.

18 MR. WILLEMS: Good afternoon, your Honor. I'll
19 try not to wear you out any more than I'm sure you
20 already are. But I would like to take the opportunity to
21 make, perhaps, a few points about the issue of Act 312
22 and its relationship to PERA. And you can start by
23 looking at the two statutes, perhaps almost side by side,
24 and what their purpose and intent is. And you can see
25 that PERA is -- it's both rights and obligations, okay.

66

1 First, it establishes the right of public
2 employees to designate representatives to collectively
3 bargain with the employer. On the other side, it
4 establishes the obligation of the public employer to
5 bargain with the representatives, with the duly
6 designated representatives, the unions. So in its
7 preamble it states that it is an Act, among other things,
8 to declare and protect the rights and privileges of
9 public employees. Okay. So that's why we call it a
10 substantive statute. It defines what the public
11 employees' rights are: To bargain collectively, to join
12 in unions, to present demands for bargaining to the
13 employer, and the employer then is obliged under section
14 15(1) to respond to those demands and engage in that
15 bargaining.

16 Now, what's developed under section 15(1) is a
17 whole body of law that talks about what are you required
18 to bargain about, and there are three kinds of subjects.
19 There are mandatory subjects of bargaining. Those are
20 the ones that under section 15(1) you must bargain about
21 if the union makes a demand with respect to that. And,
22 conversely, the union must bargain with the employer if
23 the employer makes a demand in this arena. And usually
24 we think of things like hours, wages, layoff procedures,
25 things of that nature.

67

<p>1 And then there are permissive subjects of 2 bargaining. These are things that a union or employer 3 might propose but which it cannot bargain to impasse on, 4 and I'll touch on impasse in a minute more. And then 5 finally there are illegal subjects of bargaining. So you 6 have got these three categories. There is only one 7 category that the employee is required to bargain about; 8 those are the mandatory subjects.</p> <p>9 Tacking over to Act 312, there is a whole body 10 of law, and, again, I'll read the preamble to show you 11 what the differences and the intent of these acts and why 12 we call this is a process act. This is an Act to provide 13 for arbitration -- compulsory arbitration of labor 14 disputes in municipal police and fire departments, to 15 define such departments, to provide for the selection of 16 members of arbitration panels, to proscribe procedures 17 and authority thereof, and to provide for the enforcement 18 and review of awards thereof.</p> <p>19 So you take what are the mandatory subjects of 20 bargaining under PERA, what you're required to bargain 21 about on both sides, and if you do not reach a collective 22 bargaining agreement in a municipal police or fire 23 department, the City can't reach a contract with its fire 24 unions or police unions, then they are -- have a right to 25 go to Act 312 and take that dispute, that dispute over</p> <p style="text-align: right;">68</p>	<p>1 that point, and you're required to bargain all 2 throughout.</p> <p>3 For police and fire, there is this other 4 process: Act 312 arbitration. It is simply another form 5 of bargaining, bargaining over subjects that are defined 6 in PERA. And one of the aspects of Act 312 that 7 illustrates and underscores that is section 423.237a, 8 which authorizes the Act 312 arbitrator to remand a 9 dispute for further collective bargaining. And it 10 states:</p> <p>11 At any time before the rendering 12 of an award, the chairman of the 13 arbitration panel, if he is of 14 the opinion that it would be 15 useful or beneficial to do so, 16 may remand the dispute to the 17 parties for further collective 18 bargaining for a period not to 19 exceed three weeks.</p> <p>20 Now, as a practical matter, I've been 21 personally involved in Act 312 proceedings for probably 22 as long as I've been a lawyer. And I'm sure that counsel 23 for Plaintiffs have the same experience. Very often the 24 parties continue to bargain while they're in Act 312. 25 They present a number of proposals. They bargain over</p> <p style="text-align: right;">70</p>
<p>1 mandatory subjects of bargaining, and present it to an 2 arbitrator. And we have cited a number of cases, and the 3 law is well established, and counsel for the union knows 4 this inside out, I'm sure, that an Act 312 arbitrator 5 only has authority over mandatory subjects of bargaining. 6 You cannot bring permissive subjects before an Act 312 7 arbitrator. You cannot force an Act 312 arbitrator to 8 consider them. Same with, well, illegal subjects. I 9 mean, that's a whole other category.</p> <p>10 So the duty to bargain applies to mandatory 11 subjects of bargaining under PERA and case law 12 interpreting it. And, as I said, there is an impasse 13 aspect to this. Under PERA, you're required to bargain, 14 but you're not necessarily required to agree. And that's 15 in section 15 as well, the same -- at the same point 16 where the statute gives the employer or requires the 17 employer to bargain, it also says, "You have to bargain 18 in good faith, but that doesn't mean you have to agree to 19 something you don't want to agree to."</p> <p>20 Ultimately, an employer can impose if impasse 21 is reached between it and non-public safety unions, and 22 there is a whole process and procedure for that. It 23 involves mediation, fact finding. Imposition is not 24 simple. It's not easy. It can take a long time. It can 25 take months, it can take years before you actually get to</p> <p style="text-align: right;">69</p>	<p>1 some. They settle some. They leave some with the 2 arbitrator. And at the end, what have you got? You have 3 got a collective bargaining agreement. You have an Act 4 312 award. You have got portions you've agreed to or 5 tentatively agreed to that are not in dispute. And at 6 the end of that, you tie all of that up in a collective 7 bargaining agreement.</p> <p>8 So although Act 312 is a statute that appends 9 to PERA, it is not PERA itself. It is, by its own terms, 10 supplementary to PERA and provides a process by which 11 public safety employees can overcome impasse and the 12 employer as well in their collective bargaining over 13 mandatory subjects of bargaining. So that's the critical 14 piece that's left out of the Plaintiff's argument here.</p> <p>15 The DPOA wants to convince this Court that 16 Act 312 somehow defines the subjects of bargaining, which 17 is not the case. Those are defined in PERA. Act 312 is 18 ancillary to it. It's another form of bargaining, and 19 that's what the cases say.</p> <p>20 And so if under Act 4 the duty to bargain is 21 suspended, then there are no more subjects that are 22 mandatory that can be submitted to an Act 312 arbitrator. 23 There is no need to amend or repeal Act 312 in order to 24 accomplish that. The suspension of the duty to bargain 25 under PERA by itself does that. And it does that only</p> <p style="text-align: right;">71</p>

<p>1 for those public employers who operate under a consent 2 agreement. And as counsel for the State made clear, and 3 I think it's clear from the statute from Act 4, there -- 4 that is by operation of statute; it's not by operation of 5 the Treasurer.</p> <p>6 In fact, that was -- we argued in our brief 7 that the DPOA really lacks standing to bring the argument 8 about unconstitutional delegation with respect to the 9 Treasurer because, in fact, the Treasurer cannot harm the 10 DPOA. The statute itself does that. The statute takes 11 away the duty to bargain. If anything, all the Treasurer 12 can do is benefit them by suspending the suspension, so 13 to speak, or exempting the exemption. So on those 14 grounds alone, they lack standing to even make that 15 argument.</p> <p>16 Now, the DPOA also argues that Act 312 was 17 amended, and, indeed, it was as part of Act 4, and that 18 those amendments confirm that Act 312 is not affected by 19 the amendment to PERA and -- er, the suspension of the 20 duty to bargain. But, again, that rests on a fundamental 21 misconstruction of the statute. Because the Treasurer 22 also has the authority under a consent agreement to 23 reinstate the duty to bargain, obviously there has to be 24 a mechanism for that -- for the provisions under any 25 consent agreement to also be considered in Act 312.</p> <p style="text-align: right;">72</p>	<p>1 a means for them to stabilize financially. Any 2 provisions including operating plans, financial stability 3 agreements, things of that nature need to be taken into 4 account if there is an Act 312 proceeding.</p> <p>5 So by amending the ability-to-pay portion of 6 Act 312 of the -- of section 9 of the standards that an 7 arbitrator is supposed to apply, the legislature took 8 into account anything that might happen under Act 4, 9 anything that might happen under a consent agreement, or 10 anything that might be devised if an emergency manager is 11 put in place.</p> <p>12 Does that help you with respect to the 13 relationship between Act 312 --</p> <p>14 THE COURT: Yes.</p> <p>15 MR. WILLEMS: -- and PERA?</p> <p>16 THE COURT: Thank you.</p> <p>17 MR. WILLEMS: Is there any questions on that?</p> <p>18 THE COURT: No.</p> <p>19 MR. WILLEMS: Okay. There's a couple other 20 points I want to make. One is, there is an agreement 21 being made here that all of this is completely 22 destructive of the union. I think the term "dismantling 23 the DPOA" was used in oral argument, and that is 24 absolutely not the case. The -- as I indicated before, 25 there are both rights and obligations under PERA. The</p> <p style="text-align: right;">74</p>
<p>1 That's why it was amended. It was amended in two parts, 2 section 9, subparagraph (8) and subparagraph (9). (8) 3 provides for what happens if you have an emergency 4 manager and the emergency manager agrees to enter into 5 Act 312 or doesn't eviscerate the Act 312 rights. And 6 section (9) provides for what happens if there is a 7 consent agreement.</p> <p>8 And one of the -- one of the reasons this is 9 done is section 9 sets out the standards by which an 10 arbitrator is supposed to review the proposals and 11 evidence of the parties and fashion an award, and there 12 has been a long debate about those prov -- the -- those 13 provisions of section 9; whether they are effective 14 enough; what is the weight to be given to each of them, 15 and there is a lot of argument between the unions and 16 public employers and in the case law about that.</p> <p>17 However -- and so the legislature at the same 18 time that it was amending those -- those provisions 19 looked at the ability-to-pay section. Prior to these 20 amendments, ability to pay was only one factor for an Act 21 312 arbitrator to look at. Given the exigencies of the 22 last decade, if not longer, and given that Act 4 is a 23 statute, it's actually a successor statute to Act 72 and 24 to a prior act, that Act 4 is legislation intending to 25 address communities in financial distress and provide for</p> <p style="text-align: right;">73</p>	<p>1 right to join in unions, the right to have designated 2 union representatives, none of those are being abrogated. 3 Only section 15(1), the obligation to bargain, is 4 suspended.</p> <p>5 And as are the affidavit of Jack Martin 6 attests, and as I can stand here and tell you, it is not 7 the City's intent, nor does it have the authority under 8 the FSA or under Act 4, to dismantle the DPOA, to refuse 9 to recognize it, and, in fact, the City intends to 10 continue many of the -- the procedures and policies, so 11 to speak, that are effectuated under a collective 12 bargaining agreement. Grievance procedures, arbitration 13 procedures, trial boards for this particular group, those 14 are going to continue. Union representation is going to 15 continue. In most cases, they're not going to notice the 16 difference.</p> <p>17 The dues checkoff, service fee checkoff, all of 18 those kinds of things that make for a collective 19 bargaining type of relationship where the union 20 interfaces with the employer in order to resolve problems 21 that arise in that relationship, all of that is going to 22 continue.</p> <p>23 If, indeed, the City wanted to dismantle the 24 DPOA, the first thing it would do would be to eliminate 25 dues checkoff and cut off the financial pipeline for the</p> <p style="text-align: right;">75</p>

<p>1 membership to the union. That has been done but not in 2 this case. That is not the intent at this point. The 3 intent is to keep the DPOA, and that is because this is 4 not a permanent state. This is not a repeal of Act 312. 5 This is not a doing away with Act 312. This is a duty to 6 -- the suspension of the duty to bargain is coextensive 7 with the financial stability agreement.</p> <p>8 At some point, presumably, collective 9 bargaining will return and the DPOA will once again be 10 entering into negotiations and Act 312 proceedings. This 11 is not neither an act nor an intent to do what the DPOA 12 is claiming the City can or will do. And that 13 particularly speaks to the provision of the FSA that 14 addresses the Mayor's authority. As you rightly noted, 15 the authority even for an emergency manager is -- 16 although the provision in the FSA mimics that language, 17 it says -- it qualifies it. The Mayor is only entitled 18 to do what he is able to do under the law. Under the 19 law, all he can do is not bargain or suspend bargaining 20 on -- on expired contracts. He has no authority, nor is 21 he exercising any authority to terminate existing 22 collective bargaining agreements.</p> <p>23 Indeed, there are two other collective 24 bargaining agreements in the City of Detroit Police 25 Department. There is the Detroit Police Lieutenants and</p> <p style="text-align: right;">76</p>	<p>1 relating to Act 31 while your decision is pending. If 2 the Court does not stay those proceedings, then the Act 3 312 process and machinery will proceed, and the City is 4 at risk of having its concerns placed before a third- 5 party arbitrator, and the result of that is 6 unpredictable.</p> <p>7 We -- you know, the DPOA has said, "Oh, what 8 we've got is a drop in the bucket." It's \$33 million. 9 That's not a drop in the bucket. Yes, the budget is 10 1.2 million if you discount the enterprise areas of the 11 City, but when you're looking at 150,000, 180,000 12 deficits coming up in the next two years and --</p> <p>13 THE COURT: You mean \$157 million.</p> <p>14 MR. WILLEMS: I'm sorry, million, yes. I 15 misspoke. When you're looking at that size of a deficit, 16 every dollar counts, and \$33 million is just a piece of 17 the puzzle. As counsel for the State pointed out, there 18 are 48 collective bargaining units, 48 agreements, 30 19 supplementals. There is a lot at stake here. This is 20 one piece of it. It's as critical a piece as any other 21 piece. The City has to have these savings, and it has to 22 have them now. The City spends over \$1 million a day on 23 its operations. We can't afford to do that without 24 putting the FSA in place in its entirety, and that 25 includes the DPOA.</p> <p style="text-align: right;">78</p>
<p>1 Sergeants Association, whose contract expires in a year, 2 and the DPCOA, the Detroit Police Command Officers 3 Association, whose contract also expired on June 30th and 4 on whom -- er, with respect to whom the same terms and 5 conditions of employment are being imposed. They are not 6 here. They're not demanding Act 312. They have the same 7 rights as DPOA. They're not here saying that the world 8 is going to end and that the City will be a wash in 9 crime.</p> <p>10 In fact, many of those horror scenarios that 11 have been painted for you here are just as likely to 12 happen if the City runs out of money, which it has done 13 and which it continues to do and has to lay people off, 14 particularly police officers and fire officers.</p> <p>15 So for those reasons we respectfully request 16 that you deny their motion for a temporary restraining 17 order, dismiss the complaint in its entirety and with 18 prejudice, and allow the City to effectuate its rights 19 under Act 4 and the benefit of Act 4 that has been passed 20 through the consent agreement to suspend the duty to 21 bargain and engage in the process of achieving financial 22 stability over the next three to five years, a daunting 23 task at best.</p> <p>24 Finally, if the Court is not going to rule 25 today, we request that you stay the MERC proceedings</p> <p style="text-align: right;">120</p>	<p>1 THE COURT: Okay. Thank you.</p> <p>2 MR. WILLEMS: Thank you.</p> <p>3 THE COURT: Mr. Hodge?</p> <p>4 MR. HODGE: I defer to my colleague, 5 Mr. Willems. Thank you, your Honor.</p> <p>6 THE COURT: Okay.</p> <p>7 Brief rebuttal?</p> <p>8 MR. FILLIPE IORIO: Thank you. I will be 9 brief. Your Honor, as to Mr. Jarvis's comment about the 10 contract terminating, the reality in the labor scenario, 11 especially in Act 312, is it doesn't technically 12 terminate where there is pending Act 31 proceedings. 13 Under 14 MCL 243.243, the existing wages, hours, terms and 15 conditions continue. So it's not, I think, a fair 16 statement to say somehow the contract terminates. In the 17 labor realm, especially Act 312 pendency, existing terms 18 continue.</p> <p>19 Mr. Murphy made much comment on the fiscal 20 integrity of the City and their very existence being at 21 stake. Those are all arguments that do not belong in 22 this Court. They belong before the Act 312 panel. The 23 legislature saw fit to make clear that the arbitration 24 panel must give the financial ability to pay as the most 25 significant factor in analyzing the DPOA's demands.</p> <p style="text-align: right;">79</p>

1 That's where that belongs, not before this Court.
2 He also talked about the constitutional claim,
3 and I want to make sure that this Court understands you
4 don't have to make a constitutional finding to rule in
5 favor of the DPOA, and that is because this PA 4 did not
6 amend Act 312. PERA, despite Mr. Willems' statements and
7 arguments, does not control Act 312. Act 312 is a
8 separate, independent statute. I point again to the
9 *Center Line* case, the Court of Appeals case, which is
10 good law which states that. And also point again to the
11 substantive rights that are set forth in Act 312.
12 So you don't have to make any constitutional
13 finding to find that the DPOA is entitled to Act 312
14 rights. We have made a constitutional claim just to
15 point out that the Treasurer, where he claims to have
16 suspended section 15 rights under PERA -- I'm sorry not
17 the Treasurer claims he suspended, but the Treasurer
18 having the right to revive section 15 rights, that is an
19 unconstitutional delegation because there are no,
20 absolutely no standards. But you don't have to make that
21 finding to determine that the DPOA is entitled to Act
22 312.
23 He also mentioned, I think, there were close to
24 3,000 DPOA police officers. That number is, as stated in
25 Joseph Duncan's affidavit, 2,130. He mentioned the

80

1 firefighters not being here and the LSA not being here.
2 The LSA is lieutenants and sergeants. The firefighters'
3 contract is still in effect. It's got another year in
4 effect. And the City has taken no action to terminate,
5 modify, amend, or change that. There is no reason for
6 the firefighters to be here because the City isn't
7 extracting any sort of concessions on the firefighters.
8 The same thing with the LSA, lieutenants and
9 sergeants. The contract is still in effect. The City
10 hasn't taken any action to extract any sort of
11 concessions that it claims it needs in order to function
12 on a day-to-day basis. There is no reason for either of
13 those two groups to be here.
14 The -- Mr. Murphy also commented on the Court
15 of Claims. Again, we would be willing to brief that as
16 it wasn't raised at least in the State's brief and the
17 Defendant City Mayor brief and other Deputy briefs. We
18 maintain that there is jurisdiction in this Court.
19 Again the whole of the lawsuit is based upon
20 the FSA. I cannot envision this being split up in a
21 circuit court in Wayne County and the State claim being
22 addressed by this Court. It would be not only
23 inefficient, but how could you have a scenario where two
24 different courts are looking at the same FSA and making
25 determinations as to its applicability or

13-53846-111 Doc 11102-7 Filed 04/21/16 Entered 04/21/16 12:24:19 Page 115 of 120

81

1 non-applicability?
2 Mr. Murphy also made comment, what is the State
3 being directed to do or prevented from doing? You know,
4 I pointed out the FSA and the mechanism in the FSA, the
5 enforcement mechanisms. The State is directing the City
6 to do certain things. They are directing the City to
7 take actions against the DPOA. There is also a major
8 penalty that the City will be imposed upon if they do not
9 take those actions, the ultimate penalty being having a
10 receivership declared. So to somehow claim the State is
11 not doing anything would require a -- blinders, to put on
12 blinders and to not take into account the true meaning of
13 the FSA.
14 Mr. Murphy also made comment that he believes
15 the Act 312 is separate -- er, is not separate and
16 distinct. I would point your Honor to -- we filed a
17 reply brief to the City's brief. In that brief we
18 attached as Appendix A an amicus brief that the State
19 Attorney General filed in a separate case, a Detroit
20 Firefighters' case in the Supreme Court. They filed it
21 November 2, 2007, where the State Attorney General was
22 arguing exactly what the DPOA is arguing here: Act 312
23 is separate and distinct from PERA, and that the circuit
24 courts have the authority not only to enforce it but the
25 obligation to enforce it if, indeed, the status quo is

82

1 not being maintained during the pendency of arbitration.
2 We would ask that you take consideration of the
3 State's position in an admittedly different case that
4 involved different parties. Well, I guess it didn't
5 involve totally different parties. The City of Detroit
6 was a defendant in that case as well.
7 As to Mr. Willems' argument in the Act 312 and
8 its relation to PERA, they are clearly two different
9 statutes. And to make the argument that somehow Act 312
10 is procedural but PERA is substantive would require this
11 Court to write something into the Act 312 statute that is
12 not there. Act 312 is a substantive provision. It
13 contains real rights.
14 Again, I would direct the Court to look at
15 section 423.231, and I'm reading:
16 It is the public policy of this
17 state that in public police and
18 fire departments where the right
19 of employees to strike by law is
20 prohibited, it is requisite to
21 the high morale of such employees
22 and the efficient operation of
23 such departments to afford an
24 alternate expeditious
25 effective, and binding procedure

83

1 for the resolution of disputes,
2 and to that end the provisions of
3 this act, providing for
4 compulsory arbitration, shall be
5 liberally construed.
6 That is not a procedure. That is a right.
7 That is something that the legislature saw fit to enact
8 that goes above and beyond anything that's contained in
9 PERA. That is a right that no public employee has other
10 than police and fire employees.
11 The Court should take notice and in its
12 consideration of the interplay of PA 4 and Act 312 the
13 fact that PA 4 was enacted March 16, 2011, and Act 312
14 was amended and effective July 20, 2011. Again, the
15 legislature's presumed to know the law on its books. If
16 it wanted to invalidate Act 312 proceedings when a
17 consent agreement is in place, it would have done so, and
18 it did not do so.
19 Mr. Willems mentioned the affidavit of
20 Jack Martin. Our understanding is Jack Martin is the CFO
21 who's been recently appointed through the terms of the
22 FSA. So he's not been on the job long, at least in terms
23 of calendar months. And, you know, his affidavit that at
24 this time or at this point they're not going to be making
25 changes to policies and procedures is entirely

84

1 inconsistent with what the Director of Labor Relations is
2 telling my client, and you have those letters in
3 evidence. Exhibit A to the -- I'm sorry, Exhibit I to
4 the first Duncan affidavit and the other exhibits clearly
5 state that the City through its labor relations
6 department will be determining on a case-by-case basis
7 what provisions of the now expired collective bargaining
8 agreement will be continued.
9 And there is nothing, nowhere, and even the
10 Mayor's counsel mentioned "at this time." So although
11 they are collecting dues at this time, that does not mean
12 under the City's theory that tomorrow they couldn't
13 decide to stop, and that is the irreparable harm. At
14 this point the City because of pressure from the State is
15 saying, "We have 'terminated the contract'. We will not
16 be subject to 312. We will not be subject to mediation,
17 and we are willing to sit down with you and tell you what
18 your new employment terms will be."
19 And if you look at the supplemental affidavit
20 of Joe Duncan, Exhibit A, that's essentially what the
21 City says in -- from its labor relations director.
22 Again, Mr. Willems mentioned the LSA contract. They're
23 not here. That contract has expired. And as far as we
24 know, and we understand, they have not -- the City or the
25 State hasn't taken any action to extract concessions from

85

1 the LSA. He mentioned the DPCLA. That's the command
2 officers. I think there's less than 40 command officers,
3 and what their position is really has no relevance or
4 bearing on the legal issues that are before you today.
5 The -- Mr. Willems mentioned that somehow
6 giving this to a third-party arbitrator in Act 312 would
7 not be -- would not be appropriate. The City sure didn't
8 seem to think it was inappropriate to enter into an
9 agreement where if they violate that agreement, they will
10 have an emergency manager appointed who will divest the
11 democratically elected City Council and Mayor from having
12 any authority.
13 The DPOA maintains that it is entitled not only
14 to injunctive relief but to a declaratory judgment. The
15 DPOA is asking that this Court recognize that Act 312 is
16 a separate statute that prevails, that the City is
17 subject to Act 312, and that the State be prohibited from
18 taking any action to obstruct, prevent the Act 312
19 process from continuing.
20 We also object to the City's request that the
21 MERC proceedings be stayed. And unless you have any
22 further questions, I don't have anything in addition.
23 THE COURT: Nope. That's it.
24 MR. FILLIPE IORIO: Oh, your Honor, just one
25 more point if I could. The -- you had asked about the

86

1 tentative agreement and was it in writing. It is
2 attached as part of our exhibit to the initial Duncan
3 affidavit. Exhibit C, the first page is the actual
4 initiation of the Act 312 proceedings. The next 12 pages
5 were the tentative agreement that was reduced to writing
6 in February of 2012.
7 THE COURT: I'm sorry, what exhibit was that?
8 MR. FILLIPE IORIO: That is Exhibit C to the
9 initial Duncan affidavit, not the exhibits that we gave
10 you today but the exhibits that were filed with the
11 verified complaint. The first page is the notice of
12 status of negotiations. The next page and continuing is
13 the tentative agreement that was reduced to writing.
14 Thank you.
15 THE COURT: You're welcome. Okay. The Court
16 has read the briefs filed by the parties. The issue
17 today is whether or not the Court should grant a
18 preliminary injunction. There was an ex parte TRO that
19 was signed. I was on vacation at the time, and it was
20 signed by Judge Aquilina enjoining the Defendants from
21 taking any action to implement Public Act 4, section 14a
22 (10), FSA sections 4.1 and/or 4.4. And they were also
23 enjoined from taking any action to implement any other
24 provisions of PA 4 or the FSA that purports to suspend or
25 restrict Act 312 and/or the collective bargaining against

87

<p>1 Plaintiff DPOA. And they were also enjoined from failing 2 and/or refusing to maintain the status quo in compliance 3 with section 13 of Act 312 with respect to terms and 4 conditions of employment pending operation of Act 312 5 compulsory arbitration proceedings.</p> <p>6 The City contends that -- not the City, excuse 7 me, the Detroit Police Officers Association, also called 8 the DPOA, contends that the City of Detroit is obliged to 9 engage in compulsory Act 312 labor arbitration regarding 10 a successor labor agreement because the legislature did 11 not expressly amend or repeal Act 312 when it exempted 12 the local governments from the duty to bargain under 13 section 15 of the Public Employment Relations Act, also 14 called P-E-R-A or PERA when they enacted Public Act 4.</p> <p>15 And the City claims that the Act 312 is 16 separate and distinct from PERA and that when the 17 amendment was -- when the amendment was enacted to PERA, 18 specifically under section 15(9):</p> <p>19 A unit of local government that 20 enters into a consent agreement 21 under the local government and 22 school district fiscal 23 accountability act -- 24 Which is Public Act 4. 25 -- is not subject to subsection</p> <p style="text-align: right;">88</p>	<p>1 agreement entered, the local government is not subject to 2 subsection (1), which is their duty to bargain, 3 basically.</p> <p>4 And the Defendants claim that there is no duty 5 to bargain or to enter into binding arbitration under Act 6 312, and, therefore, the injunction should not be 7 granted.</p> <p>8 Now, the Court, in looking at whether or not to 9 grant an injunction, a party moving for one must meet the 10 four standard requirements that are briefed by the 11 parties, and they're stated in the <i>Thermacool</i> -- 12 <i>Thermacool</i> case, I believe, but they are:</p> <p>13 Number one, the probability that the Plaintiff 14 will succeed on the merits.</p> <p>15 Number two, the degree of irreparable harm that 16 the Plaintiff will suffer if injunctive relief is not 17 granted.</p> <p>18 Number three, the balance between the harm the 19 Plaintiff will suffer if leave is not granted and the 20 harm the Defendant will suffer if it is granted.</p> <p>21 And the fourth requirement is whether or not 22 the injunction will promote the public interest.</p> <p>23 Here, I believe the -- well, first of all, all 24 four factors must be -- er, Plaintiff must prevail on all 25 four factors. And the -- really the deciding factor for</p> <p style="text-align: right;">90</p>
<p>1 (1) for the term of the consent 2 agreement as provided in the 3 local government and school 4 district fiscal accountability 5 act.</p> <p>6 And subsection (1) provides that: 7 A public employer shall bargain 8 collectively with the 9 representatives of its employees 10 as described in section 11 and 11 may make and enter into 12 collective bargaining agreements 13 with those representatives.</p> <p>14 And it also defines what it means: 15 To bargain collectively is to 16 perform the mutual obligation of 17 the employer and the 18 representative of the employees 19 to meet at reasonable times and 20 confer in good faith with respect 21 to wages, hours, and other terms 22 and conditions of employment, or 23 to negotiate an agreement and to 24 execute a written contract. 25 So under section 15(9), if there is a consent</p> <p style="text-align: right;">89</p>	<p>1 this Court is whether the -- whether or not the 2 injunction will promote the public interest. It's common 3 to anyone to read in the newspapers about the dire 4 financial conditions that the City of -- City of Detroit 5 is experiencing. So when I look -- when I view that and 6 I've read the affidavits of the parties, and I would just 7 say that I think, you know, police officers deserve 8 every, you know, dollar that they earn, but I don't 9 believe that the public interest would be served by 10 granting an injunction, and for that reason there would 11 be greater harm to the Defendant if the injunction is 12 granted than to the Plaintiffs if the injunction is not 13 granted.</p> <p>14 And the Court notes that based on Mr. Murphy's 15 comments, this would not be permanent. Hopefully that in 16 a few years the City will recover, and you can go back to 17 your Act 312 arbitration. But the Court is denying the 18 motion for the preliminary injunction.</p> <p>19 Mr. Willems, if you'd submit an order, please.</p> <p>20 MR. WILLEMS: I have orders prepared, 21 your Honor.</p> <p>22 THE COURT: And I believe that that would 23 probably resolve the case.</p> <p>24 MR. FILIPE JORIO: Well, could I ask for some 25 clarification, your Honor?</p> <p style="text-align: right;">91</p>

1 THE COURT: Go ahead.

2 MR. FILLIPE IORIO: We have asked for

3 declaratory judgment as well, and that would require a

4 determination of the merits of the case.

5 THE COURT: Well, then, it would not resolve

6 the entire case --

7 MR. FILLIPE IORIO: Well --

8 THE COURT: -- because this was just for the

9 TRO today. I'm not going to make constitutionality

10 rulings as to Public Act 4 today.

11 MR. FILLIPE IORIO: All right. Our counts on

12 declaratory judgment don't all include declar -- er,

13 don't all involve constitutional claims, but we would

14 submit that the four factors for injunctive relief aren't

15 something to be weighed when you're looking at a

16 declaratory judgment action. In that sense, you'd be

17 looking at the merits of the claims raised by the DPOA.

18 And we would note that, you know, this is an important

19 case to my client. As far as guidance from you in

20 proceeding further, do you see additional hearings?

21 THE COURT: If you want the Court to make

22 additional rulings, I would do so. But in regard to the

23 Act 312, I'll make some additional findings right now.

24 Perhaps that would be helpful. But I've considered your

25 argument that Act 312 is totally separate, and the fact

92

1 that there was only an amendment to PERA does not -- does

2 not -- does not change the Court's ruling because looking

3 at the case law, I believe that PERA is the umbrella

4 statute. And Act 312 simply is specific, and it provides

5 a further mediation process to public safety employees,

6 firefighters, police officers.

7 But the initial collective bargaining is done

8 under the Public Employees Relations Act. And the fact

9 that that statute was amended also affects Act 312 in

10 that you're prohibited from going ahead with mandatory

11 arbitration.

12 If I'm going to issue an opinion in regard to

13 other issues raised, then I would like the jurisdiction

14 issue addressed.

15 MR. FILLIPE IORIO: I don't know how we bring

16 closure to this case if we don't address the other

17 counts. And it just -- looking at the case, I'm not sure

18 what other proceedings need to be done from our end. I

19 mean, do you envision hearings?

20 THE COURT: Well, in your closing, in your

21 closing rebuttal, you ask that the Court grant an

22 injunction and that I make a declaration that Act 312 is

23 a separate statute, and of course it's a separate

24 statute. And you wanted Defendants enjoined from taking

25 no further action against changing any working conditions

93

1 which I denied.

2 Now, the Defendants ask that I dismiss the

3 lawsuit in its entirety. Because the issue is moot, I'm

4 not going to stay the MERC proceedings as requested by

5 Defendants. I know you have other -- you have six counts

6 in the complaint.

7 You also made the argument in Count I that the

8 PA 4 is unconstitutional because of the separation of

9 powers clause. I'm not prepared to rule on that today.

10 But you have to meet all four prongs for an injunction,

11 and I'm ruling against you on the public interest prong.

12 So it's really moot whether or not I found for you or not

13 in regard to PA 4's constitutionality.

14 MR. FILLIPE IORIO: But it's not moot as to our

15 other counts that request declaratory judgment. We've

16 asked the Court to declare that, for instance, the DPOA

17 is entitled to Act 312 proceedings, and that PA 4 and the

18 FSA do not restrict or limit, in any way, the DPOA's

19 right to -- to participate in the Act 312 process.

20 And I just wanted clarity as far as your --

21 we're asking for a ruling on the merits as well and --

22 THE COURT: Well, then I'll need to write an

23 opinion, but today the injunction is denied.

24 MR. FILLIPE IORIO: All right.

25 MR. MURPHY: Your Honor, I've prepared an order

94

1 just denying the injunction as to the State Defendants

2 that I would ask the Court to at least look at and enter.

3 It doesn't have any other rulings on the merits.

4 THE COURT: Show it to counsel.

5 MR. MURPHY: I've showed it to my Co-Defendant

6 counsel, but --

7 MR. HODGE: Just write in "All Defendants."

8 MR. MURPHY: Your Honor, I can change it to All

9 Defendants instead of State Defendants if --

10 I've shown it to him, and I've changed State to

11 All, and it only denies the injunction.

12 Is that correct in my statement, Mr. Iorio?

13 MR. FILLIPE IORIO: Yes.

14 THE COURT: That's all for the record.

15 (At 4:50 p.m., recessed;

16 reconvened at 4:51 p.m.)

17 THE COURT: Go back on the record.

18 MR. FILLIPE IORIO: Thank you.

19 THE COURT: You have five minutes.

20 MR. FILLIPE IORIO: Well, we would move to stay

21 operation of this order denying the preliminary

22 injunction pursuant to MCR --

23 THE COURT: 2.119.

24 MR. FILLIPE IORIO: Yes.

25 THE COURT: What is the number? 2.119?

95

1 MR. FILLIPE IORIO: Is that what it is?
2 THE COURT: I think so. I get them from time
3 to time.
4 MR. FILLIPE IORIO: If you'll just give me a
5 moment, I'll look.
6 THE COURT: You're moving for reconsideration.
7 MR. FILLIPE IORIO: I'm sorry, we're moving for
8 a stay injunction pending appeal, 2.614(C). Obviously we
9 don't have a final order, but we would ask this Court
10 stay the order denying the injunction, to keep in place,
11 essentially, the status quo.
12 THE COURT: Well, it would be by application
13 for leave, but, you know, you do have to ask the trial
14 court for a stay prior to asking the Court of Appeals.
15 So the motion for a stay is denied. And if
16 you'd submit an order on that effect, then you can file
17 your application for leave to appeal.
18 MR. FILLIPE IORIO: And on that, just -- and I
19 understand the Court is busy and we foisted this upon you
20 without a lot of notice, but as far as your opinion and
21 order, is that something that you would envision being
22 issued in the near future?
23 THE COURT: You know, probably within 60 days
24 or less.
25 MR. FILLIPE IORIO: Okay. Okay.

96

1 THE COURT: So I'll try to get it out as soon
2 as I can, but I wanted to rule on the injunction today.
3 MR. FILLIPE IORIO: All right. Thank you.
4 THE COURT: You're welcome. Thank you.
5 MR. MURPHY: Thank you, your Honor.
6 THE COURT: You're welcome.
7 (At 4:54 p.m., the matter is
8 concluded.)
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24 13-53846-tjt Doc 11102-7 Filed 04/21/16 Entered 04/21/16 12:24:19 Page 119 of
25 120

97

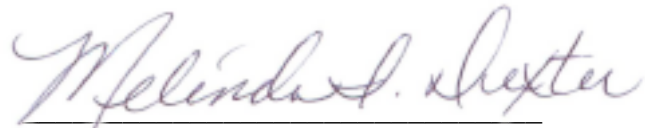
1 STATE OF MICHIGAN)
) SS.
2 COUNTY OF INGHAM)
3

4 CERTIFICATE OF REPORTER
5

6 I, Melinda I. Dexter, Certified Shorthand
7 Reporter, do hereby certify that the foregoing
8 **97 pages** comprise an accurate, true, and complete
9 transcript of the proceedings and testimony taken in the
10 case of **Detroit Police Officers Association** versus **City**
11 **of Detroit, et al., Case No. 12-80-MK, on Monday, July 9,**
12 **2012.**

13 I further certify that this transcript of the
14 record of the proceedings and testimony truly and
15 correctly reflects the exhibits, if any, offered by the
16 respective parties. WITNESS my hand this the eleventh
17 day of July, 2012.
18
19
20

21
22
23
24
25


Melinda I. Dexter, RPR, CSR-4629
Official Court Reporter
313 West Kalamazoo
Post Office Box 40771
Lansing, Michigan 48901-7971